Supreme Court, U.S.
FILED

061125 FEB 15 2007

OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

In re: Erin Farms, Inc.

John Caldwell Timmons
Petitioner pro se

vs.

Deere Credit, Inc.; Myron N. Terlecky, Esq., Chapter 11 Trustee
Respondents

On Petition For Writ Of Certiorari
To The United States Court of Appeals
for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

John Caldwell Timmons
Petitioner pro se
10343 U.S. Rt. 23
Lockbourne, Ohio 43137
740-983-3654

PRELIMINARY STATEMENT

Deere Credit, Inc., in a Bankruptcy Adversary Proceeding, erroneously claimed the 50% share of the 2003 crop owned by John Timmons and the 50% share of the crop owned by the Pryor Timmons Heirs and the Elizabeth Timmons Estate. The evidence used to promote their claim was based upon an application for credit made in the fall of 2002 wherein the debtor, Erin Farms, Inc., represented that they would cash rent and operate 100% of the Timmons properties for the 2003 crop year.

Negotiations had occurred between Erin Farms and the Petitioner Timmons that their proposal to operate the farm properties might be possible for the 2003 crop year but would be contingent upon the advance payment of 100% of the rent for that year.[1] This advance payment of rent was not forthcoming and John Timmons resumed the operation of these properties on a 50/50% crop share rental for the 2003 crop as he had previously enjoyed in the 2001 and preceding crop years.

The custom operators, who previously had been engaged by Timmons to harvest and haul the grain from the 2003 crops, were served with a Temporary Restraining Order (TRO), sought by Deere Credit, Inc. and issued by the bankruptcy court, which prohibited the harvest of crops from the Timmons properties and other identified properties. These custom operators were later hired by the Chapter 11 Trustee to complete the harvest with the proper rationale that they had the equipment and manpower to get the job accomplished in a timely fashion.

The 2003 crop, grown on the Timmons' property, was not harvested by the Chapter 11 Trustee, but was subsequently lost due to bad weather and flooding that occurred at the end of November. The custom operators had

---

[1] **Potts – Timmons 2002 Contract, July 22, 2002, app. Pg. 55a.**

previously promised Timmons that they would appear by or before November 1, 2003, with the harvest to be completed in three or four days; a reasonable time because of their custom harvest of the crops from previous years.

Questions Presented for Review

1. Can an individual be denied a "right to intervene" if he appears in an adversary proceeding, moves for an expedited hearing to determine ownership, and presents evidence of his ownership of the property that is the subject-matter in dispute?

2. If a person files papers in a court asking to intervene as a matter of right and submits accompanying documents to prove his ownership of the property claimed by another individual, does the Plaintiff still have the duty to serve a summons and complaint or does the individual already have adequate knowledge and further notice is not necessary? Are there other rights involved in service of process beyond the Defendant's right to notice?

3. Can a trial court preserve a defendant's right to bring a second lawsuit in another proceeding or court, or is the unresolved issue barred by the principle of res judicata?

4. Can an attorney, or other designated representative of a party-defendant, agree to a settlement of ownership issues in a pre-trial conference, without the approval or signature of that party-defendant?

5. Would procedural Due Process Rights be violated if a court fails to provide a defendant with a prejudgment hearing in order to defend his ownership of property that is the subject matter of a complaint?

6. Can a court render a final appealable order for one defendant, subsequent to a pretrial conference that was conducted without testimony or presentation of evidence, if ownership claims from the remaining multiple parties also remain unresolved?

PARTIES TO PROCEEDING:

Pursuant to S.Ct. Rule 14.1(b), Petitioner supplies the following list of parties for this Petition:

Petitioner

John Caldwell Timmons, *Petitioner pro se,* 10343 U.S. Rt. 23, Lockbourne, Ohio 43137 Telephone: (740) 983-3654

Respondents

Joseph C. Winner, Esq., McFadden, Winner, and Savage, Counsel for Respondent John Deere Credit, Inc., 175 S. Third Street, Suite 210, Columbus, Ohio 43215-5134 Telephone (614) 221-8868, Fax (614) 221-3985

Myron M. Terlecky, Esq., Chapter 11 Trustee, Strip, Fargo, Hoppers, & Leithart, 575 South Third Street, Columbus, Ohio 43215
Telephone (614) 228-6345 Fax (614) 228-6369

TABLE OF CONTENTS

Document Page

Preliminary Statement.....i-ii
Questions Presented.....ii-iii
Parties to Proceeding.....iii
Table of contents.....iv

PETITION FOR A WRIT OF CERTIORARI

Citations To Opinions Below.....1
Jurisdictional Statement.....1
Statutory Provisions Involved.....2
Statement of the Case.....2
Jurisdiction over the parties.....3
Case No. 06-3058 (6th Circuit).....5
Intervention.....5
Pretrial conference.....6
Case No. 06-3212.....10
Appeal from the order of confirmation.....14
Res judicate.....15

APPENDIX

Document.....Date Of Entry.....Page

1. Sixth Circuit's
Order (Case No. 06-3212).....11/6/2006.....1a-9a

2. Sixth Circuit's
Order (Case No. 06-3058).....11/6/2006.....10a-14a

3. Bankruptcy Appellate Panel Order
denying rehearing.....1/13/2005.....15a

4. Bankruptcy Appellate Panel
Order for three appeals.....8/3/2005.....16a-29a

5. BAP Order Denying Stay.....11/4/2004....30a-31a
6. Bankruptcy Order
Denying Service of Process, etc.....11/04/2004....32a-34a

7. Suggestion of Non-Joinder
With supporting Documents.....8/16/2004.....35a-37a

8. Bankruptcy Order Approving
conversion.....8/10/2004.....38a-39a

9. Motion to Compel
Service of Process.....7/19/2004.....40a-41a

10. Bankruptcy Order Authorizing
Distribution of Funds.....7/14/2004.....42a-44a

11. Bankruptcy Order Making
Timmons a Party in Interest.....12/22/2003....44a-45a

12. Agreed Order for Harvest
Crops from Timmons Properties.....12/22/2003....46a-48a

13. Amended Suggestion of
Inadequate Joinder of Parties.....11/19/2003.....49a-50a

14. Motion for Expedited Hearing.....10/30/2003.....51a

15. Suggestion of Inadequate Joinder
of Parties With Supporting Evidence
of Ownership of Grains.....10/30/2003....52a-54a

16. 2002 Rental Contract.....7/22/2002.....55a

PETITION FOR A WRIT OF CERTIORARI

CITATIONS TO OPINIONS BELOW

Pursuant to S. Ct. Rule 14.1(d), Petitioner submits that no publication has been made of the decisions of the Bankruptcy Court, the Bankruptcy Appellate Panel, or of the Sixth Circuit in regard to this action.

JURISDICTIONAL STATEMENT

This is a Petition for Writ of Certiorari in regard to a decision of the United States Court of Appeals for the Sixth Circuit entered on November 6, 2006. No party has sought rehearing or any extension of time to file this petition. Review of the Bankruptcy Court's orders on the Timmons' claim is based upon an "abuse of discretion" as well as a "clearly erroneous review of finding of facts and improper conclusions of law" as delineated by bankruptcy rule 8013 and Federal Rule of Civil Procedure (F.R.Civ.P.) 52(a) and 52(c).

Three appeals were taken from two orders that were issued by the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division located in Columbus, Ohio. The Bankruptcy Appellate Panel affirmed the ruling of the Bankruptcy court and this decision was also affirmed by the United States Sixth Circuit Court of Appeals. Affirmation by the Sixth Circuit thus confers the jurisdiction for the resolution of this controversy in the United States Supreme Court pursuant to 28 U.S.C. § 1254(1) and S. Ct. Rule 10(a) and 10(c).

STATUTORY PROVISIONS INVOLVED

Pursuant to S. Ct. Rule 14.1(f), Petitioner has set out in full text the cited portions of The Federal Rules of Civil Procedure (F.R.Civ.P.), The United States Code, and various other selections in the Appendix.

STATEMENT OF THE CASE

Erin Farms, Inc. filed a Chapter 11 Bankruptcy Petition on September 5, 2003 and Deere Credit, Inc. instituted an Adversary Proceeding seeking a determination of lien priority and ownership of the crops that they could claim. Petitioner filed a timely Motion to Intervene[2] and a Motion for Expedited Hearing[3] with evidence that the crop was owned on a 50%/50% crop share; Petitioner owned 50% of the crop as the farm operator and the property owners, the Elizabeth Timmons Estate and the Pryor Timmons Heirs, owned the other 50% of the crop as the land owners. John Timmons also owned a 1/3 share of the Timmons properties but a sister was executor and principal to the partnership with a brother also involved who had assumed certain oversight duties. Erin Farms had operated the Timmons farm on a 50%/50% crop share basis, in 2002, with the Timmons Family. However, the rental contract contained specific stipulations that limited the rental to the 2002 crop year; it was not a continuing contract.[4] Timmons filed a "Suggestion of Inadequate Joinder of Parties with Supporting Evidence of Ownership of Grains" on October 30, 2003. The motion was intended to gain access to the court so as to enable his right to quickly defend his ownership of the crop. Although the document probably should have been styled as a Motion to Intervene as a Matter of Right, it would seem that the body of the document had properly describe that John Timmons, the

---

[2] Suggestion of Inadequate Joinder, October 30, 2003, app. Pg. 52a-54a.

[3] Motion for expedited Hearing, October 30, 2003, app. Pg. 51a.

[4] Timmons – Erin Farms contract, app. Pg. 55a

Pryor Timmons Heirs, and the Elizabeth Timmons Estate were the true owners of the crop and not Erin Farms, Inc.

Documentation of ownership included Farm Service Administration (FSA) contracts for 2002 and 2003 as well as the Farm Rental Contract that permitted Erin Farms to operate the farm on a 50%/50% crop share basis but limited to the 2002 crop year. The contract further stipulated that any further negotiations to operate the farms for subsequent years would have to be in writing and would not be negotiated until after the completion of the 2002 harvest. This stipulation was entered to protect the future interests of John Timmons and would be proof positive, in a court, that the contract was not a continuing contract but was limited to only the 2002 crop year.

JURISDICTION OVER THE PARTIES

Fed.R.Civ.P. 4(c) determines how jurisdiction over an individual is usually effectuated. The Petitioner acknowledges that the bankruptcy court does have subject matter jurisdiction as well as jurisdiction over both the parties and the property for the case at bar and does meet the requirements for substantive due process. However, the court neither provided Timmons adequate notice of the action nor an opportunity to be heard; a denial of the procedural due process that is imposed by the Fifth and Fourteenth Amendment's Due Process Clause.[5]

Pursuant to Fed.R.Civ.P. 320, appearance or the filing of papers by a defendant who has not been served with process qualifies as an admission that the individual had knowledge that satisfies the Adequate Notice requirement. However, Timmons has been unable to determine how he could counterclaim, demand jury trial, or ask for a removal to

---

[5] ***Fuentes v. Shavin*, Supreme Court of the United States, (1972), 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed. 2d 556, rehearing denied 409 U.S. 902m 93 S.Ct.177, 34 L.Ed. 2d 165.**

a District Court; rights also guaranteed by the Fifth and Fourteenth Amendment's Due Process Clause. To assume that the procedure to access these further rights, in the absence of a complaint and summons, would presuppose that most Defendants would have the ability to possess knowledge that is even beyond the knowledge of most attorneys and would ultimately defeat the Defendants Constitutional right to represent himself.

Deere Credit obtained a Temporary Restraining Order directed to a Custom Operator who had previously been hired by Petitioner to harvest and transport the 2003 crop to a local grain facility. The TRO enjoined them from the harvest of crops found on properties that had been listed by Deere Credit and that the harvest of these crops was entrusted to the direction and oversight of the Chapter 11 Trustee. The court ruled that the crops were to be harvested, sold, and the proceeds from the sale of the crops were to be held in escrow by the Trustee with the proviso that ownership issues would be determined later. Evidently, the court had conducted a prejudgment hearing that resulted in the grudging consent of the assembled defendants to the court's supervised harvest of their crops.

An amended complaint was filed by Deere Credit that listed additional properties that might have been under Erin Farms operation for the 2003 crop year. The Timmons properties were included in this amended complaint but the service of the summons and complaint was not received until after the prejudgment hearing; notice of the hearing was therefore not timely received. John Timmons, the operator of the Timmons farm and the owner of the other 50% of the 2003 crop, was never served with summons and complaint but instead learned of the bankruptcy court's action from his sister who had been elected as Executor and principal for the Timmons Estate and the Timmons Heirs.

CASE No. 06-3058 (Sixth Circuit)[6]

John Timmons elected to appeal from a portion of the November 4, 2004 bankruptcy court's order[7] that denied his Motion for Rehearing of the order that converted Erin Farms from Chapter 11 reorganization to Chapter 7 liquidation and which also denied his Amended Motion to Compel Service of Process[8] to procedurally include Timmons in the action. The Sixth Circuit did not consider this order to be a final appealable order but issued an opinion nevertheless because of its relation to the other two appeals. The probability is that this appeal could merge with either or both of the other appeals because it is unfinished business and represents for Petitioner a frustration that his 2003 crop had been lost and it appeared that the bankruptcy court was intent on closing the case without a hearing.

Intervention

Fed.R.Civ.P. 24(a) provides for intervention of right that is provided an individual who has not been, but should have been, included in a court action. Fed.R.Civ.P. 24(c) delineates the procedure by which intervention is obtained; the motion to intervene is accompanied by a pleading that establishes the basis for the claim. The Sixth Circuit has addressed Rule 24(a) in *Grutter v. Bolinger* [9] and determined that there are four issues that are to be examined:

1. Timeliness of the motion.

2. Whether a "substantial legal interest" exists for movant.

---

[6] Sixth Circuit Order, November 6, 2006, app. Pg. 10a-14a

[7] Order denying multiple motions including the motion to compel service of process, November 4, 2004, app. Pg. 32a-34a.

[8] Motion to Compel Service of Process, July 19, 2004, app. Pg. 40a-41a.

[9] *E.g., Grutter v. Bollinger,* 11 F. 3d 394, 397-98 (6th Circuit, 1999).

3. Whether that "legal interest" can be defended If intervention is denied.

4. Whether the movant's rights will be adequately protected by other parties already incorporated in the action.

Examination of all of the above factors unequivocally results in the determination that Timmons qualified for intervention pursuant to Rule 24(a) and that he had satisfied all procedural requirements imposed by Rule 24(c).

Pretrial Conference

On December 15, 2003, the trial court conducted a pretrial conference that was instituted in order to prepare for the hearing that would determine ownership and lien priority issues. Timmons did not attend this conference because he had just lost his crop to flooding, had been denied an expedited hearing[10], had already filed what he felt was dispositive proof of ownership, and he did not want to be subjected to what he felt would probably be excessive pressure to relinquish his claim of ownership.[11] A relationship seems to exist, at least to this Petitioner's

---

[10] No order was issued, but Timmons had filed two documents on October 30, 2002 (Suggestion of Inadequate Joinder of Parties and Motion for Expedited Hearing) and did communicate with the trial court's clerk who advised him that he should not try to harvest the crop because these properties were listed as claimed by Deere Credit and would be harvested by the Chapter 11 Trustee. On November 19, 2003, Timmons filed another document (amended suggestion of inadequate joinder) and was again informed by the same clerk that the court felt that "it would not be fair to the others" if the court were to conduct the expedited hearing for Timmons.

[11] Plaintiff's attorney had earlier contacted Timmons and requested that he harvest the crop and put it into grain bins located on the farm. Timmons replied that he would try to get another custom harvester and would have the grain hauled to a grain facility where it would be placed in storage, less the bushels that would be sold in order to pay the custom harvester. This attorney thereupon refused Timmons' proposal and terminated the conversation.

untrained eye, between Rule 24(a)(2)[12], Rule 19(a)[13], Rule 16(c)[14], and Rule 320[15].

1. Intervention as a matter of Right, Rule 24(a)(2), is prefaced with the following: (a) Intervention of Right. "Upon timely application anyone shall be permitted to intervene in an action:" -----.

2. Joinder of Persons Needed for Just Adjudication, Rule 19(a), contains, in the body of the Rule, the following text: Persons to be Joined If feasible. "A person who is subject to service of process and----."

3. Pretrial Conferences; Scheduling; Management, Rule 16(c), at the end of the section contains the following: "At least one of the attorneys for each party ----.

4. Defendant's appearance. Rule 320, (a) Requirement of appearance. "The defendant appears by serving an answer ----. ----, except that if the summons was served on the defendant----." (b) when appearance confers personal jurisdiction, generally. "----, an appearance of the defendant is equivalent to personal service of the summons upon him, ----."

The reason to emphasize the four Rules above is because of the pretrial hearing that the court was to conduct in preparation for a trial of crop ownership and lien priority. Timmons did not attend for the reasons already stated and, after the pretrial conference, two orders were issued by the court that affected the petitioner.

The first was an agreed order on the harvest of crops[16] that was approved and signed by the probate attorney who

---

[12] Rule 24(a), Intervention of Right.
[13] Rule 19(a), Joinder of Persons Needed for Just Adjudication.
[14] Rule 16(c), Subjects for Consideration at Pretrial Conferences.
[15] Rule 320. Defendant's appearance.
[16] Agreed Order for the Harvest of Crops from the Timmons Properties, December 22, 2003, app. Pg. 46a-48a.

had been hired by the Executor of the Elizabeth Timmons Estate to guide the Estate through probate. The three Timmons siblings had elected to pay inherence taxes over a 15 year period as family farmers who continued to operate their farms on a crop share basis and not as an asset to cash rent. This attorney knew full well that the farms were operated on a 50%/50% crop share basis and it is disconcerting, if not illegal, for this individual to relinquish ownership of the crop. This attorney also knew that there had been a flood and that most of the crop had been lost on November 30, 2003 and pursuant to the agreed order, there would be nothing left for the Petitioner's 50% share. The agreement therefore also impinged upon the rights of the Petitioner; a totally unacceptable situation. Although the Rules allow for pretrial settlements, it is inconceivable that a person supposedly representing the best interests of the Estate would relinquish ownership. A question presented above for the court is whether a representative can legally commit to an unfavorable pretrial settlement without the approval and signature of the represented Defendant? Hopefully, the answer is no.

The second order established that the court would consider Timmons a Necessary Party and a Party in Interest to the proceeding[17]. It is as interesting to view the timing of the order as well as to analyze the meaning of the terms found in the order. The order was signed December 18, 2003 but was not entered into the docket until December 22, 2003 and may not have been mailed until the next day. Allowing two days for delivery, it might seem that an attorney, let alone an illiterate pro se, might be hard pressed to intercept and timely respond to the order by filing a Notice of Appeal within ten days.

---

[17] **Bankruptcy Order Making Timmons a Party in Interest and a necessary party; styled simply as "Order", December 22, 2003, app. Pg. 44a-45a.**

Examination of the terminology and definitions of the words used in this order, the following definitions (Definitions taken from Black's Law Dictionary) emerge:

1. Party; ($2^{nd\ definition}$) a "party" to an action is a person whose name is designated on record as plaintiff or defendant. -----. "Party" is a technical word having a precise meaning in legal parlance; it refers to those by or against whom a legal suit is brought, ----, the party plaintiff or the party defendant; all others who may be affected by the suit, indirectly or consequently, are persons interested but not parties.

2. Necessary and indispensible (sp. indispensable?) Parties; Term used prior to 1966 to determine if a person should or must be joined in an action. The label "indispensible" referred to an absentee party that produced the result that an action should be dismissed if the absent party could not be joined. The label "Necessary" was used if the party was one who ought to be joined if this was possible. Rule 19 is now titled "Joinder of persons needed for just adjudication". Rule 19(a) defines the class of persons who are needed for just adjudication. If an absentee meets this test, and is subject to process,the court must require that he be joined. If the absentee meets the test but is not subject to process (R. 19[b]), the court must decide whether to continue in his absence or to dismiss the case.

If one analyzes the December 22, 2003 order, we find a conflicted order that establishes John Timmons both as a party in interest (neither plaintiff nor defendant) and a necessary party (one who must be joined if possible; i.e. one who is subject to process and would be made either plaintiff or defendant when served). Considering the timing of the order, one is led to the conclusion that the court attempted to marginalize Timmons and deny him intervention of right by stating that Timmons was a Party in Interest; neither plaintiff nor defendant. Instead, it appears that the court may also have confused its terminology in an effort to eliminate

Timmons as a party defendant but instead established him as a necessary party or one who must be served with process in order to make him a defendant.

____ Whether the court could issue a final appealable order from a pretrial hearing during which testimony was not taken and the movant was not present, is questionable. Judgments are only issued after hearings or trials at which the plaintiffs and defendants are given ample opportunity to be heard and to be questioned. Instead of the pretrial hearing in preparation for the determination of lien priority and ownership, it would have been necessary to first conduct a hearing in response to the October 30, 2003 "Motion for Expedited hearing". It might also appear that the court was attempting to sanction Timmons in an attempt to eliminate him as an individual to be served with process and so give him an opportunity to counter claim (there were now flood losses), demand jury trial, and possibly serve notice of removal to the District Court because the crop was already lost (The court was actually attempting to deny Timmons certain of his civil rights in order to protect Deere Credit – a far removal from the unbiased and neutral position we expect judges to occupy).

In the totality, one is led to the ultimate conclusion that the Petitioner, John Timmons, must be served with process and the case cannot continue until a hearing is actually held in response to the motion to intervene and the motion for expedited hearing.

Case No. 06-3212

Appeal from the Order of Distribution

The Petitioner, John Timmons, appealed two different orders that, if uncontested, would have ended the case and any involvement for Timmons; thus barring him and the Timmons family from seeking redress for the losses they suffered because of the erroneous (fraudulent?) claim upon

the grain grown on the Timmons properties for the 2003 crop year. These two cases were consolidated and eventually were taken to the Sixth Circuit as Case No. 06-3212.

If one looks to the December 15, 2003 pretrial conference, you find that the hearing on lien priority and crop ownership was never held. Instead, all parties had entered into pretrial agreements that obviated their claims, except for the Petitioner Timmons (who is as yet to be served) and possibly the Timmons Heirs and the Timmons Estate. The proposition must be formulated that the attorney for the Timmons family did not have the authority to relinquish ownership of the 2003 crop and that any agreement so promulgated would (could?) not be binding upon the Timmons family.

In conversations with some of the Defendants at various hearings, Timmons found that by and large the defendants were all in agreement that the crop was theirs, or that they had contributed to, but would not be compensated for the planting and input costs that they had contributed which benefited and enlarged the bankruptcy estate. One individual stated that he wanted to continue because he had personally borrowed the funds needed to plant the 2003 crop and now would be faced with attorney fees that he could not pay. It is interesting to note that Deere Credit agreed to pay this individual's attorney fees to the tune of $10, 000.00 if he would relinquish his claim to the crop. (This does not bode well for the integrity of the legal system when defense and plaintiffs attorneys collude and agree to pay each others attorney fees if the client agrees to accept the settlement; one would wonder whose interests does the Defense Attorney actually represent?).

A second Defendant had entered into a verbal agreement for joint venture, with Erin Farms, to plant certain crops. It appears that they paid ½ the expenses and input costs and had sold the crop early because the crop was

harvested before the filing date. On an action to recover preferential payments (actually not because they had paid ½ the costs to produce the crop), an agreement was finally tendered that if this individual returned the proceeds from the sale of the crop, then all planting expenses and input costs would be paid back to this partner except for $19,000.00 that the court assured would be a claim that would be preserved for the Defendant which could be recovered as an administration expense in the main bankruptcy. Of course, now that the agreement has been finalized, the money returned, and the Adversary Proceeding closed (tentatively), the court now indicates that the settlement in the adversary proceeding actually terminated the claim of this individual and established a bar by res judicata that would defeat this attorney's claims for the remaining funds that the court had previously assured would be available from the main bankruptcy (so much for the integrity of the court). One undetermined factor is that I have as yet had an opportunity to evaluate the integrity of the Trustee. Hopefully the younger elements of the legal system are emerging and replacing hardened elements, and that there will be a progression toward an improvement in legal standards once older practitioners are replaced (if they are not corrupted by and acquire these deficiencies from the older practitioners).

Timmons first appealed the Order of Distribution of Funds from the sale of grain taken (seized) from the 2003 crop. Removal of the money from the Chapter 11 Trustee to the possession of Deere Credit would have compromised any counter-claim that might, in the future, be presented by the Petitioner or his family. On the same day that the appeal was perfected, Timmons also filed a Motion for Stay and requested that the money be held by the Trustee until all appeals were final. Timmons was informed at the stay hearing that the money had already been distributed and that the issue was moot. He then applied to the Bankruptcy Panel for stay, mainly to hear what the panel might say in relation

to the distribution and also knowing that the issue was moot. Theirs was a similar slant as was found in the bankruptcy court. The money was distributed, the issue was now terminated or moot, and even though the applicant promoted the "bird in the hand" theory, the appeals court would not have the authority to reverse the act. "Bird in Hand" is an interesting homily that possibly might be matched by an original homily of the Petitioner that would state: "If you give a dog a bone, he might not get any meat, but he probably would reach the marrow if he is hungry enough."

Quoting from Anderson's Sixth Circuit Practice Manual, third edition, pg. 30:

§ 3.01 Introduction

Once a proper appeal is taken, a district court cannot modify the judgment or order on appeal and is divested of jurisdiction "over those aspects of the case involved in the appeal."[18] The further reference to Griggs from the same Manual states:

§ 1.06 District Court Jurisdiction During Appeals.

As a general proposition, the filing of the notice of appeal divests the district court of jurisdiction "over those aspects of the case involved in the appeal."[19]

To distribute the money improperly, if not illegally, would also violate the Petitioner's Due Process rights guaranteed by the Fourteenth Amendment. If an individual is convicted of a crime, then why not hang him quickly before his attorney can get a stay or post bond on appeal? That would definitely moot the appeal.

---

[18] *Griggs v. Provident Consumer Discount Company.*, 459 U.S. 56, 58, 103 S. Ct. 400, 74 L. Ed. 2d 225 (1982); see also chapter 1, § 1.06 *supra* at 13-14

[19] Ibid, pgs. 13-14.

The money distributed to Deere would be the funds from which a counter-claim could be paid. I believe that it would be in the interest of justice that this Court demand the return of the money before this individual becomes discouraged with the ineptitude and the "Judge Roy Bean mentality" that he has so far encountered.

Appeal from the Order Converting the Chapter 11 Reorganization to a Chapter 7 Liquidation

Timmons tried repeatedly to have the bankruptcy court serve Timmons with process as a right. This was done with duplicate filings in both the Adversary Proceeding and the bankruptcy case. On August 16, 2004 the "not as yet Defendant Timmons" filed a "Suggestion of Non-joinder with Supporting Documents. This final attempt to get the attention of the court didn't seem to bother the court but it was intent on seeing that the case rapidly progress to a liquidation. Timmons was aware that the order of conversion would terminate the responsibility of the Chapter 11 Trustee in this case and would lead to the production of a Trustee's Report that would terminate the bond and further involvement of the Trustee.

On July 14, 2004 the court authorized the distribution of funds to Deere Credit over the objections of Timmons. In the conclusion of the order, the court states:

ORDERED, ADJUDGED and DECREED that the Trustee be, and he hereby is,

Authorized to make the disbursements specified in paragraphs 11, 12, 13, 14, 15 and 17 of the Motion; and it is further

"ORDERED, ADJUDGED and DECREED that this Order does not prejudice the right of John Timmons to pursue any claim he may wish to assert in this Court or any other appropriate forum.

IT IS SO ORDERED."[20]

The Sixth Circuit affirmed the decision of the bankruptcy court and the BAP as follows:

"The bankruptcy court's finding that cause for conversion existed is not challenged on appeal. Rather, Timmons is concerned that conversion of the case to Chapter 7 will prejudice his right to pursue potential claims against Deere Credit and the estate. However, as has been pointed out previously, Timmons's ability to pursue his claims relating to the loss of the 2003 crop has been preserved. Therefore, his argument is without merit.

Accordingly, the decision of the BAP affirming the bankruptcy court's orders that approved settlement and disbursement of funds in an adversary proceeding, and converted Erin Farms' bankruptcy case from a Chapter 11 to Chapter 7, is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT"

The Sixth Circuit believes that if the right to bring a lawsuit in the same or a different court is preserved by the bankruptcy court's order, then why doesn't this court allow for the service of process as Timmons requested? In a hearing on the matter, the court had declared that Timmons could bring a lawsuit anyplace he wanted. Timmons thereupon pointed out the fact that the bankruptcy Adversary Proceeding was a lawsuit that deprived him of property without Due Process and he now wished to achieve some form of restitution for the losses he had sustained because of Deere's wrongful claims.

Res Judicata

---

[20] **Excerpt from the Bankruptcy Order Authorizing the Distribution of Funds, July 14, 2004, app. Pg. 42a-44a.**

Timmons has previously stated that the court could also have given him the right to sue the President, the Pope, or God. After some reflection, he must now modify this statement because even though the first two instances are possible, I am not sure that there could be found many individuals who might want to act as process servers in the latter situation. Although the first part, the service portion, might be attempted, it would be the process server's return that probably would encounter some difficulty.

Again to Black's Law Dictionary: "Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive ---- and to them, constitutes an absolute bar to a subsequent action involving the same claim, ----. ---- The sum and substance of the whole rule is that a matter once judicially decided, is finally decided."

"Although it is difficult to give a precise definition of the doctrine of claim preclusion, it is possible to sketch its general form. One formulation is: In certain circumstances, when a second suit is brought, the judgment in a prior suit will be considered conclusive, ----, as to matters that actually were litigated or should have been litigated in the first suit."[21]

Although not litigated on the merits because the hearing to determine the lien priority and ownership of the grain grown on the Timmons Farm for the 2003 crop year was never held, it should have been held and litigated. The owners of the land had maintained their 50% share of the crop on a 50/50 crop share for years. It would be inconceivable to imagine how Deere Credit could even think of a right to their 50% share. The 50% operator's share of the crop was traditionally held by John Timmons for years while he operated the farm. The substitution of Erin Farms for Timmons for one year did not break the continuity of the continuous nature of his rental agreement. However, a

---

[21] Civil Procedure, Fifth Edition, Cound, Friedenthal, Miller, and Sexton, Chapter 14, pg. 1148.

continuing contract was denied Erin Farms who agreed to operate the farm on a one year contract beginning and ending with the 2002 crop year. The Petitioner does not know whether or not Deere Credit received any payments that were derived from the Timmons properties in the 2002 crop year. However, this is a collection issue that exists between Erin Farms and Deere Credit. The only possible claim that this institution would have on the crops grown on the Timmons Farms would be if a continuing contract had been given Erin Farms for multiple years which the Timmons Family had not done.

A difference of decision exists between the ruling of the Sixth Circuit and some previous decisions reached by this same court as well as decisions that are in conflict with this same decision. In *Browning* the Sixth Circuit determined that: "Res judicata does not apply where a claim is expressly reserved by the litigant in the earlier bankruptcy proceeding."[22]

However in *KDI Corp* [23] the Sixth Circuit rules as follows:

> The rule [of res judicata] provides that when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and their privies are thereafter bound "not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose."

In *Sanders*[24] (The concept of res judicata) "discourages repetitive suits, saves judicial time and

---

[22] ***Browning v. Levy*, 283 F. 3d 761, 774 (6th Circuit, 2002)**

[23] ***In re KDI Corp.*, 14 B.R. 350, 353 (Bankruptcy Ohio, 1981)**

[24] ***Sanders Confectionery Products, Inc. v. Heller Financial, Inc.*, 973 F. 2d 474, 480 (6th Circuit, 1992) cert. denied, 506 U.S. 1079, 113 S.Ct. 1046, 122 L.Ed. 2d 355 (1993)**

resources, and encourages parties to rely on the results of final adjudications." Id. (quoting *Federated Department Stores v. Moitie*,) 452 U.S. 394, 101 S. Ct. 2424, 69 L.Ed. 2d 103 (1981)

> "Four elements must be shown in order for a prior judgment to have a preclusive effect:
>
> 1. A final decision on the merits in the first action by a court of competent jurisdiction;
>
> 2. The second action involves the same parties, or their privies, as the first;
>
> 3. The second action raises an issue actually litigated or which should have been litigated in the first action;
>
> 4. An identity of the causes of action."

As can be seen, the third element would constitute a res judicata for the Timmons Family and John Timmons.

A second suit was initiated by Moite and Brown after the first had been dismissed (*Federated Department Stores, Inc. v. Moite*) for "failure to allege an "injury" to their "business or property". When *Moite II* and *Brown II* reached the 9th Circuit on appeal, it held that, although a strict application of res judicata would preclude the second action, an exception should be made when the dismissal rested on a case that had been effectively overruled. The Supreme Court disagreed:

> "The Court of Appeals -----rested its opinion in part on what it viewed as 'simple justice'. ------. This Court has long recognized that public policy dictates that there is an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties." Baldwin v. Traveling Men's Association,

283 U.S. 522, 525, 51 S.Ct. 517, 518, 75 L. Ed. 1244 (1931).

CONCLUSIONS

It appears that service of process was denied the petitioner which would be a violation of his procedural due process rights provided by the Fifth and Fourteenth Amendments to the Constitution. Additional, the failure to litigate outstanding issues in the case, with the right preserved to institute another action on the same cause would be forbidden by the principle of res judicata with the right to seek redress for wrongs forever barred the Defendants.

The Sixth Circuit affirmed a decision of the BAP and also of the Bankruptcy Court when it declared that the Petitioner could bring suit in either the same court, via a different proceeding, or in another court to decide an issue that should have tried in the first adversary proceeding. Res Judicata issues exist that place the 6th Circuit's decision in conflict with the Supreme Courts decision in Sanders, Moite, and Baldwin. This conflict therefore has opened this case for review in the Supreme Court of the United States.

APPENDICES

NOT RECCOMENDED FOR FULL TEXT PUBLICATION

No. 06-3212

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ON APPEAL FROM THE BANKRUPTCY APPELLATE PANEL OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

In re: ERIN FARMS, INC., Debtor,

Filed NOV. 06, 2006
LEONARD GREENE, Clerk

JOHN TIMMONS,

Plaintiff-Appellant,

v.

DEERE CREDIT, INC.; MYRON N. TERLECKY, Trustee

Plaintiffs-Appellees.

ORDER

Before: KEITH and COLE, Circuit Judges; STEEH, District Judge* *The Honorable George Caram Steeh, United States District Judge for the Eastern District of Michigan, sitting by designation.

John Timmons appeals from a decision of the Bankruptcy Appellate Panel (BAP) affirming a bankruptcy court's orders that: 1) approved settlement and disbursement of funds in an adversary proceeding; and 2) converted Erin Farms' bankruptcy case from a Chapter 11 to Chapter 7. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon

examination, this panel unanimously agrees that oral argument is not needed. Fed.R.App. P. 34(a).

Timmons is a pro se party in interest in this Chapter 11 bankruptcy proceeding brought by the debtor Erin Farms, Inc. Timmons was part owner and operator of a 600 acre farm (Timmons Farm), which consisted of two separate parcels. The owner of the first parcel is the "Elizabeth Timmons Estate" (Timmons Estate). The owners of the second parcel are the "Pryor Timmons Heirs" (Timmons Heirs). Timmons Estate and Timmons Heirs consisted of Timmons and his two siblings. Since 1973, Timmons operated Timmons Farm continually on a "50/50 crop share basis." Essentially, Timmons Estate and Timmons Heirs paid property taxes and half of the farm's production expenses. Timmons supplied the required labor and equipment to plant and harvest the crop and paid the remaining half of the production expenses. Profits generated by the crop were divided equally between Timmons Estate/Timmons Heirs and Timmons.

Erin Farms provided "custom" planting and harvesting services on Timmons Farm in the 2001 crop year. Some services were subsequently subcontracted to Pitstick Farms, Inc. (Pitstick Farms) who was also a custom farm service provider. Timmons rented Timmons Farm to Erin Farms in the 2002 crop year. Pursuant to its agreement with Timmons, Erin Farms agreed to operate the farm on the same 50/50 crop share basis that was established between Timmons Estate/Timmons Heirs and Timmons. In the 2003 crop year, Timmons resumed operation of Timmons Farm, although Erin farms continued to provide custom spray services for the farm. The planting and harvesting of the crop was subcontracted to Pitstick Farms.

Deere Credit, Inc. extended crop input financing to Erin Farms; however, the loans went into default on May 15,

2003 at which time approximately $2.3 million was due and owing. The primary collateral for the debt consisted of wheat, soybeans, and corn produced by Erin Farms.

On September 5, 2003, Erin Farms filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Ohio. Because corn and soybeans were in the field and the time to harvest was approaching, Deere Credit filed an emergency motion for appointment of a Chapter 11 Trustee. The bankruptcy court appointed Myron N. Terlecky as Chapter 11 Trustee.

Deere Credit filed an adversary proceeding seeking a determination of the validity, priority and extent of liens and other interest in the crops. The complaint was subsequently amended to name additional parties with potential interests, including the Trustee and landowners who had rented farm ground to Erin Farms for the 2003 crop year. The landowner defendants included the Timmons Estate and the Timmons Heirs. Timmons was subsequently identified as a necessary party in the adversary proceeding.

The Trustee filed a motion for an order approving the settlement of certain issues in the adversary proceeding and authorizing distribution of funds. The Trustee was holding approximately $1.1 million in proceeds from the harvest of crops grown in 2003. None of the proceeds came from crops harvested on Timmons Farm. Under the settlement agreement, the Trustee would retain a $28,000 "carve out" from those proceeds, less expenses. The remaining proceeds, less the payment of nominal amounts in settlement of other claims, would be distributed to Deere Credit to satisfy its secured interest.

The bankruptcy court granted the Trustee's motion to

approve the settlement of certain issues and authorized the distribution of funds. Timmons filed an appeal of the bankruptcy court's order to the BAP. The bankruptcy court also granted the Trustee's motion to convert the Chapter 11 case to a Chapter 7. Timmons filed an appeal of this order to the BAP.

The bankruptcy court's order also denied other procedural motions filed by Timmons including his "Suggestion of Non-Joinder with Supporting Documents" and "Amended Motion to Compel Service of Process." Timmons filed a separate appeal from that portion of the bankruptcy court's order that denied his amended motion to compel service of process to the BAP.

The BAP ultimately affirmed the bankruptcy court's orders. Timmons has filed separate appeals from the BAP's decision. This appeal is from the BAP decision affirming the bankruptcy court's entry of the order approving settlement and disbursement of funds in the adversary proceeding initiated by Deere Credit, and the bankruptcy court's entry of the order converting Erin Farms' bankruptcy case from a Chapter 11 to Chapter 7. The appeal from the BAP decision affirming the bankruptcy court's entry of the order denying the motion to compel service of process is pending in this court as appeal No. 06-3058.

Whether an appeal comes to this court by way of the district court or the BAP, the standard of review is the same: we focus on the bankruptcy court's decision, scrutinize that court's findingsof fact for clear error, and afford de novo review to its conclusions of law. *See Rembert v. AT & T Universal Card Servs., Inc. (In re Rembert),* 141 F.3d 277, 280 (6th Cir. 1998); *Nicholson v. Isaacman (In re Isaacman),* 26 F.3d 629, 631 (6th Cir. 1994). Findings of fact are reviewed under the clearly erroneous standard. *See* Fed. R.

Bankr. P. 8013. A finding of fact is clearly erroneous "when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Tedeschi v. Falvo (In re Falvo),* 227 B.R. 662, 663 (B.A.P. 6th Cir. 1998) (citations omitted). Conclusions of law are reviewed de novo. "De novo review requires the Panel to review questions of law independent of the bankruptcy court's determination." *First Union Mortgage Corp. v. Eubanks (In re Eubanks),* 219 B.R. 468, 469 (B.A.P. 6th Cir. 1998).

Upon review, we conclude that the bankruptcy court did not abuse its discretion in approving the settlement and distribution order. The BAP is correct for the reasons stated by that court. The Federal Rules of Bankruptcy Procedure provide that:

> [o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

Fed. R. Bankr. P. 9019. A bankruptcy court's approval of a compromise is reviewed under the abuse of discretion standard. *In re A & C Props.,* 784 F.2d 1377, 1380 (9th Cir. 1986). A reviewing court finds an abuse of discretion when it reaches a firm and definite conviction that the trial court committed a clear error in judgment. *Cincinnati Ins. Co. v. Byers,* 151 F.3d 574, 578-79 (6th Cir. 1998).
The Supreme Court has declared that:

> [t]here can be no informed and independent judgment as to whether a proposed compromise is fair and equitable until the bankruptcy judge has

> apprised himself of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated. Further, the judge should form an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of the litigation.

Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25 (1968). "A bankruptcy judge need not hold a mini-trial or write an extensive opinion every time he approves or disapproves a settlement. The judge need only apprise himself of the relevant facts and law so that he can make an informed and intelligent decision, and set out the reasons for his decision. The judge may make either written or oral findings; form is not important, so long as the findings show the reviewing court that the judge properly exercised his discretion." *In re Am. Corp.*, 841 F.2d 159, 163 (7th Cir. 1987).

When evaluating the fairness and equity of a proposed compromise, the court should consider:
(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

In re A & C Properties, 784 F.2d at 1381 (quoting *In re Flight Transp. Corp. Sec. Litig.,* 730 F.2d 1128, 1135 (8th Cir. 1984)). Although it is preferable that these matters be addressed in the bankruptcy court's opinion, "[i]f, indeed, the

record contain[s] adequate facts to support the decision of the trial court to approve the proposed compromises, a reviewing court would be properly reluctant to attack that action solely because the court failed adequately to set forth its reasons or the evidence on which they were based." *Id.* at 437.

In this case, the bankruptcy court did not make specific findings as to each and every factor enumerated above. However, the court did consider such factors as the exigent circumstances regarding the perishable assets and the monetary size of Deere Credit's secured claim. In addition, the bankruptcy court declared that it thought it was in the best interest of the estate to allow the compromise. These factors support the conclusion that the compromise was the most efficient and economical way of resolving the adversary proceeding.

Timmons's primary argument on appeal is that the bankruptcy court's unwillingness to establish ownership of the 2003 crops has prejudiced his ability to pursue any potential claims he may have against Deere Credit for not harvesting the 2003 crop and causing a substantial loss to the crop. However, this is not a material or relevant issue in determining whether to allow the settlement. As stated previously, Timmons specifically acknowledged that the settlement and distribution of funds did not include the crops grown on his farm. The settlement simply did not impact Timmons or his perceived claims. Accordingly, the bankruptcy court did not abuse its discretion in approving the compromise, and the BAP was correct to affirm that approval.

Upon further review, we conclude that the bankruptcy court did not abuse its discretion when it converted the Chapter 11 case to a Chapter 7. A judge's authority for ordering conversion in a Chapter 11 proceeding is set forth in 11 U.S.C. § 1112(b) which provides in pertinent part:

(b) . . ., on request of a party in interest *or the*

> *United States trustee,* . . . and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, including-
>
> > (1) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation; (2) inability to effectuate a plan;

Proof of any one factor is sufficient to justify conversion. *In re Route 202 Corp.,* 37 B.R. 367, 372 (Bankr. E.D. Pa. 1984). In determining whether to convert a case to Chapter 7 under this section, the bankruptcy court is afforded wide discretion to determine if cause exists and how to ultimately dispose of the case. *In the Matter of Koerner,* 800 F.2d 1358, 1367 (5th Cir. 1986). Discretionary rulings made pursuant to the Bankruptcy Code are reviewable only for abuse of discretion. *In re Gonic Realty Trust,* 909 F.2d 624, 626 (1st Cir. 1990). Findings of fact of a bankruptcy court should not be disturbed unless there is "most cogent evidence of mistake or miscarriage of justice." *In re Caldwell,* 851 F.2d 852, 857 (6th Cir. 1988).

The bankruptcy court in the case at bar determined that the trustee was no longer operating Erin Farms' business and there was no reasonable likelihood of rehabilitation. The court also determined that Erin Farms was unable to effectuate a plan and that "liquidation under Chapter 11 would impose unnecessary administration costs." The court concluded that conversion of the Chapter 11 case to a Chapter 7 was warranted.

The bankruptcy court's finding that cause for

conversion existed is not challenged on appeal. Rather, Timmons is concerned that conversion of the case to Chapter 7 will prejudice his right to pursue potential claims against Deere Credit and the estate. However, as has been pointed out previously, Timmons's ability to pursue his claims relating to the loss of the 2003 crop has been preserved. Therefore, his argument is without merit.

Accordingly, the decision of the BAP affirming the bankruptcy court's orders that approved settlement and disbursement of funds in an adversary proceeding, and converted Erin Farms' bankruptcy case from a Chapter 11 to Chapter 7, is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Greene Clerk

NOT RECOMMENDED FOR FULL TEXT PUBLICATION

No. 06-3058

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ON APPEAL FROM THE BANKRUPTCY APPELLATE PANEL OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

In re: ERIN FARMS, INC., Debtor,

Filed NOV. 06, 2006
LEONARD GREENE, Clerk

JOHN TIMMONS,
Defendant-Appellant,
v.
DEERE CREDIT, INC.; MYRON N. TERLECKY, Trustee
Plaintiffs-Appellees.

ORDER

Before: KEITH and COLE, Circuit Judges; STEEH, District Judge* *The Honorable George Caram Steeh, United States District Judge for the Eastern District of Michigan, sitting by designation.

John Timmons appeals from a decision of the Bankruptcy Appellate Panel BAP) affirming a bankruptcy court's order that denied his motion to compel service of process. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Timmons was part owner and operator of a 600 acre farm (Timmons Farm), which consisted of two separate

parcels. The owner of the first parcel is the "Elizabeth Timmons Estate" (Timmons Estate). The owners of the second parcel are the "Pryor Timmons Heirs" (Timmons Heirs). Timmons Estate and Timmons Heirs consisted of Timmons and his two siblings. Since 1973, Timmons operated Timmons Farm continually on a "50/50 crop share basis." Essentially, Timmons Estate and Timmons Heirs paid property taxes and half of the farm's production expenses. Timmons supplied the required labor and equipment to plant and harvest the crop and paid the remaining half of the production expenses. Profits generated by the crop were divided equally between Timmons Estate/Timmons Heirs and Timmons.

Erin Farms provided "custom" planting and harvesting services on Timmons Farm in the 2001 crop year. Some services were subsequently subcontracted to Pitstick Farms, Inc. (Pitstick Farms) who was also a custom farm service provider. Timmons rented Timmons Farm to Erin Farms in the 2002 crop year. Pursuant to its agreement with Timmons, Erin Farms agreed to operate the farm on the same 50/50 crop share basis that was established between Timmons Estate/Timmons Heirs and Timmons.

In the 2003 crop year, Timmons resumed operation of Timmons Farm, although Erin farms continued to provide custom spray services for the farm. The planting and harvesting of the crop was subcontracted to Pitstick Farms.

Deere Credit, Inc. extended crop input financing to Erin Farms; however, the loans went into default on May 15, 2003 at which time approximately $2.3 million was due and owing. The primary collateral for the debt consisted of wheat, soybeans, and corn produced by Erin Farms.

On September 5, 2003, Erin Farms filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the

United States Bankruptcy Court for the Southern District of Ohio. Because corn and soybeans were in the field and the time to harvest was approaching, Deere Credit filed an emergency motion for appointment of a Chapter 11 Trustee. The bankruptcy court appointed Myron N. Terlecky as Chapter 11 Trustee.

Deere Credit filed an adversary proceeding seeking a determination of the validity, priority and extent of liens and other interest in the crops. The complaint was subsequently amended to name additional parties with potential interests, including the Trustee and landowners who had rented farm ground to Erin Farms for the 2003 crop year. The landowner defendants included the Timmons Estate and the Timmons Heirs. Timmons was subsequently identified as a necessary party in the adversary proceeding.

The Trustee filed a motion for an order approving the settlement of certain issues in the adversary proceeding and authorizing distribution of funds. The Trustee was holding approximately $1.1 million in proceeds from the harvest of crops grown in 2003. None of the proceeds came from crops harvested on Timmons Farm. Under the settlement agreement, the Trustee would retain $28,000 "carve out" from those proceeds, le[g]s expenses. The remaining proceeds, less the payment of nominal amounts in settlement of other claims, would be distributed to Deere Credit to satisfy its secured interest.

The bankruptcy court granted the Trustee's motion to approve the settlement of certain issues and authorized the distribution of funds. Timmons filed an appeal of the bankruptcy court's order to the BAP. The bankruptcy court also granted the trustee's motion to convert the Chapter 11 case to a Chapter 7, Timmons filed an appeal of this order to the BAP.

The bankruptcy court's order also denied other procedural motions filed by Timmons including his "Suggestion of Non-Joinder with Supporting Documents" and "Amended Motion to Compel Service of Process." Timmons filed a separate appeal from that portion of the bankruptcy court's order that denied his amended motion to compel service of process to the BAP.

The BAP ultimately affirmed the bankruptcy court's orders. Timmons has filed separate appeals from the BAP's decision. This appeal is from the BAP decision affirming the bankruptcy court's entry of the order denying the motion to compel service of process. The appeal from the BAP decision affirming the bankruptcy court's entry of the order approving settlement and disbursement of funds in the adversary proceeding, and the bankruptcy court's order converting Erin Farms' bankruptcy case from a Chapter 11 to a Chapter 7 is pending in this court as appeal No. 063212.

Whether an appeal comes to this court by way of the district court or the BAP, the standard of review is the same: we focus on the bankruptcy court's decision, scrutinize that court's findings of fact for clear error, and afford de novo review to its conclusions of law. *See Rembert v. AT & T Universal Card Servs., Inc. (In re Rembert),* 141 F.3d 277, 280 (6th Cir. 1998) *Nicholson v.Isaacman (In re Isaacman),* 26 F.3d 629, 631 (6th Cir. 1994). Findings of fact are reviewed under the clearly erroneous standard. See Fed. R. Bankr. P. 8013. A finding of fact is clearly erroneous "when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Tedeschi v. Falvo (In re Falvo),* 227 **B.R.** 662, 663 (B.A.P. 6th Cir. 1998) (citations omitted). Conclusions of *law* are reviewed de novo. "De novo review requires the Panel to review questions of law independent of the bankruptcy court's determination." *First Union Mortgage Corp. v. Eubanks (In*

re Eubanks), 219 B.R. 468, 469 (B.A.P. 6th Cir. 1998).

Timmons claims his constitutional rights were denied because he was not served with a summons and a complaint in the adversary proceeding initiated by Deere Credit. The purpose of a summons is to give notice to a defendant that he has been sued. *See Grooms v. Greyhound Corp.,* 287 F.2d 95, 97-98 (6th Cir. 1961). After Deere Credit initiated the adversary proceeding, Timmons filed a Suggestion of Inadequate Joinder of Parties With Supporting Evidence of Ownership of Grains. Deere Credit agreed that Timmons should be a party defendant in the adversary proceeding and suggested that Timmons be permitted to intervene. Because Timmons was a frequent operator of the Timmons Farm, the bankruptcy court entered an order deeming Timmons to be a party in interest. Timmons actively participated in the adversary proceeding and nothing in the record indicates that he was prejudiced by Deere Credit's failure to serve him with a summons and complaint. Consequently, no error was committed when the bankruptcy court denied Timmons's motion to compel service of process.

Accordingly, the decision of the BAP affirming the bankruptcy court's order that denied Timmons's motion to compel service of process is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Greene
Clerk

Nos. 04-8072; 04- 8095; 04-8096
BANKRUPTCY APPELLATE PANEL
OF THE SIXTH CIRCUIT

In re: ERIN FARMS, INC., Filed Jan. 13, 2005
Debtor, LEONARD GREENE, Clerk

JOHN TIMMONS,
Appellant,

v.

DEERE CREDIT, INC.; MYRON N. TERLECKY, Trustee
Appellees.

On December 7, 2005, a judgment was entered in these cases affirming the bankruptcy court's orders approving the settlement in the Deere Credit adversary proceeding (04-8072), converting the case to chapter 7 (04-8095) and denying Appellant's motion to compel service of process (04-8096). The Appellant now moves for rehearing in Case Nos. 04-8072 and 04-8095. *See* Fed. R. Bankr. P. 8015 ("a motion for rehearing may be filed within 10 days after entry of the judgment of the . . . bankruptcy appellate panel.").

In support of rehearing, the Appellant claims that certain docketing errors were made. We find no error. All of the documents and briefs filed by the Appellant, including those referenced in his motion for rehearing, were received and considered by the panel prior to entry of judgment. The remainder of the Appellant's motion concerns the underlying merits of his appeals. We find that the motion raises no new matters or arguments that would support reversing the bankruptcy court orders at issue and conclude that the December 7, 2005, judgment was not in error.

The Appellant's motion for rehearing is **DENIED.**
ENTERED BY ORDER OF THE PANEL

BANKRUPTCY APPELLATE PANEL
OF The SIXTH CIRCUIT

Nos. 04-8072/8095/8096

In re: ERIN FARMS, INC.
Debtor

JOHN TIMMONS
Appellant,

v.

DEERE CREDIT, INC.; MYRON N. TERLECKY, TRUSTEE, CHAPTER 11 TRUSTEE, ERIN FARMS, INC.
Appellees,

Before: GREGG, LATTA, and SCOTT, Judges of the Bankruptcy Appellate Panel.

JUDGMENT

On Appeal from the United States Bankruptcy Court for the Southern District of Ohio at Columbus

This cause having been submitted upon the record of lower court proceedings and the briefs of the parties, it is the judgment of the Bankruptcy Appellate Panel that the Bankruptcy Court orders approving the settlement in the Deere Credit adversary proceeding, converting the case to chapter 7, and denying Appellant's motion to compel service of process are AFFIRMED as set forth in the opinion filed contemporaneously with this judgment.

FOR THE PANEL
/s/ Leonard Greene
Leonard Green, Clerk

By order of the Bankruptcy Appellate Panel, the precedential effect of this decision is limited to the case and parties pursuant to 6th Cir. BAP LBR 8013-1(b). See also 6th Cir. BAP LBR 8010-1(c).

File Name: 05b0015n.06

BANKRUPTCY APPELLATE PANEL
OF THE SIXTH CIRCUIT

Nos. 04-8072 and04-8095 (consolidated) and 04-8096

In re: ERIN FARMS, INC.

Debtor

JOHN TIMMONS

Appellant,

v.

DEERE CREDIT, INC.; MYRON N. TERLECKY, TRUSTEE, CHAPTER 11 TRUSTEE, ERIN FARMS, INC.

Appellees,

Appeal from the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division, at Columbus.

No. 03-63627.

Submitted August 3, 2005

Decided and Filed: December 7, 2005

Before: GREGG, LATTA, and SCOTT, Bankruptcy Appellate Panel Judges.

COUNSEL

ON BRIEF: John Timmons, Lockbourne, Ohio, for Appellant. Joseph C. Winner, McFADDEN, WINNER & SAVAGE, Columbus, Ohio, Myron N. Terlecky, STRIP, FARGO, HOPPERS & LEITHART, Columbus, Ohio, for Appellees.

OPINION

JOSEPH M. SCOTT, JR., Bankruptcy Appellate Panel Judge.

John Timmons, *pro se* Appellant, ("Appellant") filed three separate appeals relating to orders entered by the bankruptcy court in the case of Erin Farms, Inc. ("Erin Farms"). The first appeal concerns the bankruptcy court's entry of an order approving settlement and disbursement of funds in an adversary proceeding initiated by secured creditor Deere Credit, Inc. ("Deere Credit"). The second appeal pertains to the bankruptcy court's entry of an order converting Erin Farms' bankruptcy case from chapter 11 to chapter 7. These appeals were consolidated by order entered March 18, 2005. The third, related appeal is taken from the bankruptcy court's order denying Appellant's motion to compel service of process. For the reasons that follow, the bankruptcy court's decisions are AFFIRMED.

I. ISSUES ON APPEAL

The issues on appeal are: (1) whether the bankruptcy court abused its discretion when it approved the settlement and disbursement of funds in the Deere Credit adversary proceeding; (2) whether the bankruptcy court abused its discretion when it converted Erin Farms' bankruptcy case from chapter 11 to chapter 7; and (3) whether the bankruptcy court erred when it denied Appellant's motion to compel service of process.

II. JURISDICTION AND STANDARD OF REVIEW

The Bankruptcy Appellate Panel of the Sixth Circuit has jurisdiction to decide this appeal. The United States District Court for the Southern District of Ohio has authorized appeals to the Panel, and a "final order" of the bankruptcy court may be appealed by right under 28 U.S.C. § 158(a)(1). For purposes of appeal, an order is final if it "ends the litigation on the merits and leaves

nothing for the court to do but execute the judgment." *Midland Asphalt Corp. v. United States,* 489 U.S. 794, 798, 109 S. Ct. 1494, 1497 (1989) (citations omitted). An order approving a proposed settlement is a final order. *Adam v. Itech Oil Co. (In re Gibraltar Res., Inc.),* 210 F.3d 573, 576 (5th Cir. 2000). Likewise, an order converting a chapter 11 case to chapter 7 is a final order for purposes of appeal. *Vista Foods U.S.A., Inc. v. Unsecured Creditors' Comm. (In re Vista Foods U.S.A., Inc.),* 202 B.R. 499, 500 (B.A.P. 10th Cir. 1996). Although the bankruptcy court's order denying Appellant's motion to compel service of process is a non-final order, the Panel has allowed it to proceed due to its relationship to the other two appeals.

The bankruptcy court's approval of the proposed settlement and disbursement of funds is reviewed for abuse of discretion. *In re Servisense.com, Inc.,* 382 F.3d 68, 71 (1st Cir. 2004). The decision to convert Erin Farm's bankruptcy case from chapter 11 to chapter 7 also is reviewed for abuse of discretion. *Sullivan Central Plaza I, Ltd. v. BancBoston Real Estate Capital Corp. (In re Sullivan Central Plaza I, Ltd.),* 935 F.2d 723, 728 (5th Cir. 1991). "An abuse of discretion occurs only when the [trial] court 'relies upon clearly erroneous findings of fact or when it improperly applies the law or uses an erroneous legal standard.'" *Corzin v. Fordu (In re Fordu),* 209 B.R. 854, 858 (B.A.P. 6th Cir. 1997), *aff'd,* 201 F.3d 693 (6th Cir. 1999).

III. FACTS

A. Parties

Erin Farms produced wheat, corn, and soybeans. It filed a petition for relief under chapter 11 of the United States Bankruptcy Code on September 5, 2003.

John Timmons was part owner and operator of a 600 acre farm ("Timmons Farm") consisting of two separate

parcels. The owner of the first parcel, referred to by the United States Farm Service Agency ("FSA") as FSA 291, is identified throughout the record as the "Elizabeth Timmons Estate" ("Timmons Estate"). The owners of the second parcel, FSA 292, are referred to as the "Pryor Timmons Heirs" ("Timmons Heirs"). Timmons Estate and Timmons Heirs appear to consist of Appellant and his two siblings. Appellant has operated Timmons Farm on a "50/50 crop share basis" almost continually since 1973. Under this arrangement, Timmons Estate and Timmons Heirs paid taxes on the real property and paid for half of the farm's production expenses (including seed, herbicide, and fertilizer). Appellant supplied the labor and equipment required to plant and harvest the crop and paid the other half of the production expenses. The profits generated by the crop then were divided on a 50/50 basis between Timmons Estate/Timmons Heirs and Appellant.

In crop year 2001, Erin Farms provided "custom" planting and harvesting services on Timmons Farm. Some of these services subsequently were subcontracted to Pitstick Farms, Inc. ("Pitstick Farms"), another custom farm services provider. In crop year 2002, Appellant rented Timmons Farm to Debtor. Per its agreement with Appellant, Erin Farms was to operate the farm on the same 50/50 crop share basis that previously had been established between Timmons Estate/Timmons Heirs and Appellant.

Appellant states that he resumed operation of Timmons Farm in crop year 2003. However, Erin Farms continued to provide custom spray services for the farm, and the planting and harvesting were subcontracted to Pitstick Farms.

Deere Credit extended crop input financing to Erin Farms. As of the petition date, Deere Credit was owed

approximately$2.3 million. Primary collateral for the debt was the wheat, corn, and soybeans produced by Erin Farms.

When Deere Credit learned of Erin Farms' bankruptcy filing in September 2003, harvest time was rapidly approaching. Concerns regarding the upcoming harvest prompted Deere Credit to file an emergency motion for appointment of a chapter 11 trustee. The bankruptcy court held a hearing on the motion and on September 18, 2003, appointed Myron N. Terlecky as chapter 11 trustee.

B. Deere Credit Adversary Proceeding

In addition, on September 17, 2003, Deere Credit filed an adversary proceeding seeking determination of the validity, priority, and extent of its liens on various crops. On October 2, 2003, the complaint was amended to name additional defendants, which included the trustee and land owners believed to have rented farm ground to Erin Farms for the 2003 crop year. Deere Credit asserted a security interest in the crops produced by these land owners. Timmons Estate and Timmons Heirs were among the land owner defendants named in the amended complaint. Attorney Richard F. Meyer appeared on behalf of Timmons Estate and Timmons Heirs in the adversary proceeding. By order entered on December 19, 2003, Appellant was identified as a "proper and necessary party in [the] adversary proceeding." (Appellant's App. at 67, Case No. 04-8096.)

According to Appellant, Erin Farms' bankruptcy filing and Deere Credit's initiation of the adversary proceeding led to delays in harvesting. In November and December 2003, heavy rains and flooding on Timmons Farm caused severe damage to the crops. Appellant estimates that seventy-five percent of his crop was lost due the flooding. He asserts that although the remainder of the

crop survived the flooding, it subsequently was lost due to the trustee's failure to timely harvest. The parties agree that, in the end, *no grain whatsoever was harvested from Timmons Farm.*

On June 4, 2004, the trustee filed a motion for Order Approving the Settlement of Certain Issues in [the Deere Credit Adversary Proceeding] and Authorizing Distribution of Funds. At the time the motion was filed, the trustee was holding approximately $1.1 million of net harvest proceeds in an escrow account. Under the settlement agreement, the trustee would retain a $28,000 "carve out" from those proceeds, minus expenses. After payment of nominal amounts in settlement of other claims, the majority of the proceeds were to be distributed to Deere Credit in satisfaction of its secured claim. Notably, *none of these proceeds came from crops harvested on Timmons Farm.*

Appellant objected to the proposed settlement and distribution of funds, and a hearing on the matter was held before the bankruptcy court on July 8, 2004. Appellant was given full opportunity to voice his objections at the hearing, and he acknowledged that the funds subject to the settlement were not proceeds from crops grown on Timmons Farm. Still, Appellant asserted that Deere Credit did not have a valid security interest in the 2003 crops grown on the farm. According to Appellant, Deere Credit's invalid claim to his crops and the trustee's failure to timely harvest them led to their total loss. Seemingly under a "bird in the hand" theory, Appellant argued at the hearing that the trustee should not distribute funds to Deere Credit until Appellant's potential claims against Deere Credit and the estate were litigated and resolved.

The trustee, as well as the attorney for Deere Credit, assured Appellant, on the record, that the settlement would

not preclude him from pursuing claims relating to the adversary proceeding and the lost crop. Furthermore, the bankruptcy court told Appellant that approval of the settlement would not prejudice his rights.

At the conclusion of the hearing, the bankruptcy court approved the settlement, finding that it was in the best interest of the estate. On July 16, 2004, the bankruptcy court entered an order approving the settlement and authorizing the distribution of crop proceeds ("settlement and disbursement order"). The order specifically states that it "does not prejudice the right of [Appellant] to pursue any claim he may wish to assert in this Court or any other appropriate forum." (Appellees' App. at 107, Case Nos. 04-8072 and 04-8095.)

Appellant filed a timely appeal of the settlement and disbursement order on July 26, 2004. Both the bankruptcy court and the Panel denied his motions to stay that order pending appeal.

C. Conversion to Chapter 7

As the adversary proceeding progressed, Appellant raised several objections in the main bankruptcy case. On June 10, 2004, the United States Trustee filed a motion to convert the case from chapter 11 to chapter 7. The motion stated that "cause" for conversion existed because the trustee was no longer operating Erin Farms' business and there was no reasonable likelihood of rehabilitation. Furthermore, the motion alleged that Erin Farms was unable to effectuate a plan and that conversion would prevent the accrual of additional administrative expenses. On June 21, 2004, Appellant objected to the conversion motion. The objection states: "[Appellant] respectfully objects to the Trustee's proposed order for dismissal of this Chapter 11

reorganization. This objection is only for purposes of obtaining finality in the adversary proceeding where unsettled issues still exist." (Appellees' App. at 7, Case No. 04-8096.)

A hearing on the motion to convert was held before the bankruptcy court on August 5, 2004. At the hearing, the trustee consented to the requested conversion. Timmons also appeared and was given the opportunity to present argument to the court. The court attempted to explain that Timmons' concerns about the effect of conversion on his potential claims against Deere Credit and the estate were not warranted. At the conclusion of the hearing, the court granted the motion, and on August 11, 2004, an order converting the case to chapter 7 was entered ("conversion order").

On August 16, 2004, Timmons filed the pleading Motion for Rehearing to Amend Order of Conversion. Notwithstanding the bankruptcy court's previous explanation of the effect of conversion, the motion asserts:

> Conversion of the case implies that all work in the Chapter 11 Case and the Adversary Case have been satisfactorily resolved and would hence leave no forum in which a new adversary case can be taken or in which the old adversary case can be modified. This would relieve the Chapter 11 Trustee from any bond liability and would indeed be prejudicial to [Appellant's] interests.

(Appellees' App. at 13, Case No. 04-8096.) The motion for rehearing was denied by the bankruptcy court in an order entered on November 8, 2004. Appellant timely appealed the conversion order on November 17, 2004, since he filed his appeal within ten days of entry of the order denying his

motion for rehearing. *See* Fed. R. Bankr. P. 8002(a), (b)(2) .

D. Appellant's Motion to Compel Service of Process

In addition, the order of November 8, 2004, denied several procedural motions by Timmons, including his Suggestion of Non-Joinder with Supporting Documents and Amended Motion to Compel Service of Process. The motion to compel service of process alleges that Deere Credit's failure to serve Timmons with a summons and complaint in the adversary proceeding deprived him of his "constitutional right to counter-claim and defend the erroneous allegations of lien priority . . . ." (Appellant's App. at 84, Case No. 04-8096.) On November 17, 2004, Appellant filed a separate appeal from that portion of the November 8 order which denied his amended motion to compel service of process. That appeal also was timely.

IV. **DISCUSSION**

A. Settlement and Disbursement Order

"To appeal from an order of the bankruptcy court, appellants must have been directly and adversely affected pecuniarily by the order. This principle, also known as the 'person aggrieved' doctrine, limits standing to persons with a financial stake in the bankruptcy court's order." *S.E.C. v. Basic Energy & Affiliated Res., Inc.*, 273 F.3d 657, 665 (6th Cir. 2001) (quoting *Fidelity Bank, Nat'l Ass 'n v. M.M. Group, Inc., 77* F.3d 880, 882 (6th Cir. 1996)). In this case, not only did Appellant acknowledge repeatedly that the proceeds which the chapter 11 trustee proposed to distribute did not belong to him, but also the order authorizing settlement and distribution stated specifically that Appellant's rights were not affected. Nevertheless, the Panel will address

the merits of this appeal.

In considering whether to approve a proposed compromise, "[t]he bankruptcy court . . . is obligated to weigh all conflicting interests in deciding whether the compromise is 'fair and equitable,' considering such factors as the probability of success on the merits, the complexity and expense of litigation, and the reasonable views of creditors." *Bauer v. Commerce Union Bank*, 859 F.2d 438, 441 (6th Cir. 1988); *accord, e.g., Reynolds v. Comm 'r*, 861 F.2d 469, 473 (6th Cir. 1988) (citing *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424, 88 S. Ct. 1157 (1968)). A bankruptcy court's decision "authorizing the trustee in bankruptcy to enter into a compromise of creditors' claims rests in the sound discretion of the [bankruptcy] judge. A reviewing court will not disturb or set aside such a compromise unless it *obviously achieves such an unjust result as to amount to an abuse of discretion."* Mach. Terminals, Inc. v. Woodward (In re Albert-Harris, Inc.), *313 F.2d 447, 449 (6th Cir. 1963) (citations omitted). Generally, a court "abuses its discretion only when it relies upon clearly erroneous findings of fact or when it improperly applies the law or uses an erroneous legal standard."* Fleischut v. Nixon Detroit Diesel, Inc., *859 F.2d 26, 30 (6th Cir. 1988). "A finding of fact is clearly erroneous 'when although there is evidence to support it, the reviewing court, on the entire evidence, is left with the definite and firm conviction that a mistake has been committed.'"* United States v. Mathews (In re Mathews), *209 B.R. 218, 219 (B.A.P. 6th Cir. 1997) (quoting* Anderson v. City of Bessemer City, *470 U.S. 564, 573, 105 S. Ct. 1504, 1511 (1985)).*

Although the bankruptcy court here did not make specific findings as to whether the compromise was fair and equitable, it is obvious from the transcript of the July 8, 2004, hearing that the court considered numerous factors,

including the difficulty in preserving perishable assets, the tensions that existed between some of the parties, and the extent of Deere Credit's secured claim. In addition, the bankruptcy based its approval of the proposed settlement of the Deere Credit adversary proceeding on a specific finding that the settlement was in the best interest of the estate. *See Spectrum Health Continuing Care Group v. Anna Marie Bowling Irrevocable Trust Dated June 27, 2002,* 410 F.3d 304, 312 (6th Cir. 2005).

Appellant does not directly dispute the bankruptcy court's conclusions, and, once again, acknowledges that none of the funds subject to disbursement under the settlement are proceeds from crops grown on Timmons Farm. Rather, Appellant challenges the bankruptcy court's approval of the settlement order on the basis that he may have claims against Deere Credit and the Erin Farms' estate relating to the loss of the 2003 crop on Timmons Farm. Appellant apparently fears that his right to pursue those claims was cut off by the settlement. The settlement and disbursement order specifically states that it does not prejudice Appellant's right to assert claims against either the estate or Deere Credit. Appellant's assertions to the contrary are incorrect. Pursuant to the terms of the settlement and disbursement order, Appellant may assert his claims against the trustee and/or Deere Credit in any appropriate forum, within the applicable limitations period. The record supports the court's conclusion that the settlement was fair and equitable and in the best interest of the estate. The bankruptcy court did not abuse its discretion in approving the settlement and disbursement order.

B. Conversion Order

11 U.S.C. § 1112(c) provides that chapter 11 cases involving debtors who are farmers cannot be converted to

chapter 7 "unless the debtor requests such conversion." In this case, the bankruptcy court held that § 1112(c) was not applicable in light of the chapter 11 trustee's consent and the practical considerations that favored conversion. On appeal, Appellant alludes to the bankruptcy court's finding on this point as evidence of the court's failure to follow "established law," but he does not challenge the court's finding on recognizable legal grounds.

Under § 1112(b), a bankruptcy court is authorized to convert a chapter 11 case to a chapter 7 case or to dismiss it, whichever is in the best interest of creditors and the estate, for "cause." 11 U.S.C. § 1112(b). The statute contains a non-exhaustive list of ten grounds that may constitute cause for conversion or dismissal. *Id.* Generally, proof of any one of these factors is sufficient to justify conversion. *See In re Federal Roofing Co.*, 205 B.R. 638, 641 (Bankr. N.D. Ala. 1996). The court is afforded wide discretion to determine whether cause for conversion exists. *See Koerner v. Colonial Bank (In re Koerner)*, 800 F.2d 1358, 1367 (5th Cir. 1986).

In this case, the bankruptcy court's conversion order was based on findings that the debtor was no longer operating and that the bankruptcy estate was likely to be liquidated. Because Erin Farms was not likely to rehabilitate and because liquidation under chapter 11 would impose unnecessary administrative costs, the court found cause for conversion to chapter 7.

Appellant has not challenged the bankruptcy court's finding that cause for conversion existed. Instead, he asserts that conversion of the case to chapter 7 prejudiced his right to pursue potential claims against Deere Credit and the estate. Conversion of Erin Farm's bankruptcy case to chapter 7 does not impact Appellant's ability to pursue his claims relating to loss of the 2003 crop. Conversion to chapter 7 does however reduce the expense of liquidating the

bankruptcy estate.

C. Motion to Compel Service of Process

Appellant is not entitled to the relief requested in his motion to compel service of process, and the bankruptcy court's order denying his motion is proper. Timmons Estate and Timmons Heirs, owners of Timmons Farm, were named as defendants in the Deere Credit adversary proceeding. They appeared in the adversary proceeding, were represented by counsel, and could have filed the counterclaim to which Appellant repeatedly refers, if such action had been deemed necessary or appropriate. Thus, since Appellant and his two siblings are Timmons Estate and Timmons Heirs, Appellant as part owner of Timmons Farm was represented by counsel. Appellant as a frequent operator of Timmons Farm was named as a "party in interest" and was given great latitude to participate in the adversary proceeding. Nothing in the record suggests that Appellant was a necessary party or that he was entitled to be named as a defendant. Nothing in the record suggests that Appellant was prejudiced by Deere Credit's failure to serve him with a summons and complaint. The bankruptcy court did not err in denying Appellant's motion to compel service of process.

V. CONCLUSION

For the foregoing reasons, the bankruptcy court orders approving the settlement in the Deere Credit adversary proceeding, converting the case to chapter 7, and denying Appellant's motion to compel service of process are AFFIRMED.

Nos. 04-8072 and04- 8095 (consolidated) and 04-8096
BANKRUPTCY APPELLATE PANEL
OF THE SIXTH CIRCUIT

Filed: April 05. 2005
Leonard Greene, Clerk

In re: ERIN FARMS, INC.

Debtor

JOHN TIMMONS
Appellant,

v.

DEERE CREDIT, INC.; MYRON N. TERLECKY, TRUSTEE, CHAPTER 11 TRUSTEE, ERIN FARMS, INC.
Appellees,

Before: GREGG, LATTA, and SCOTT, Bankruptcy Appellate Panel Judges.

The appellant, John Timmons ("Timmons"), is a pro-se party in interest in this bankruptcy proceeding brought by the debtor, Erin Farms, Inc. Timmons now moves to stay the bankruptcy court's July 16, 2004 order granting the trustee's motion to approve the settlement of certain issues and authorizing the distribution of funds in an adversary proceeding brought by the plaintiff, John Deere Credit, Inc. ("Deere Credit"). The bankruptcy court denied a similar motion on November 8, 2004. Deere Credit opposes the motion.

The July 16 order authorized the distributions of funds obtained from the sale of crops harvested by the trustee in 2003. Deere Credit states that the trustee distributed the bulk of the proceeds from the 2003 harvest in August of 2004.

and that no part of the proceeds were attributable to grain produced on the Timmons farm. The parties are in agreement that the 2003 crop grown on the Timmons farm was not timely harvested and became essentially worthless.

When a stay motion seeks to prevent an event that has already occurred, the motion is moot. *See Carras v. Williams,* 807 F.2d 1286, 1289 (6th Cir.1986) ("Mootness results when events occur during the pendency of a litigation which render the court unable to grant the requested relief."). If all of the proceeds from the 2003 harvest have been distributed, the stay motion is moot. If there are proceeds which have-not been distributed, the factors to be considered in determining-whether a-stay pending appeal should issue nevertheless weigh in favor of denying a stay. An applicant for a stay "is always required to demonstrate more than the mere 'possibility' of success on the merits." *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog,* 945 F.2d 150, 153 (6th Cir. 1991) (citation omitted). Similarly, "[i]n evaluating the degree of injury, it is important to remember that the key word in this consideration is *irreparable.* Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough." *Id.* at 154 (internal quotations and citations omitted). The bankruptcy court found that "none of [the] proceeds to be distributed to Deere Credit, Inc., were received from crops owned by John Timmons," and granted the trustee's motion to approve the settlement without prejudice to "the right of John Timmons to pursue any claim he may wish to assert in this Court or any other appropriate forum." In view of these circumstances, the relevant factors weigh in favor of denying a stay.

The motion for a stay is DENIED.

ENTERED BY ORDER OF THE PANEL

/s/ Leonard Greene Filed 11/4/2004

This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.
Dated: November 04, 2004 /s/ Donald E. Calhoun, Jr.
Donald E. Calhoun, Jr.
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

In re:
ERIN FARMS, INC. Case No. 03-63627
B&B CUSTOM APPLICATIONS, INC. Chapter 7

Debtors. JUDGE CALHOUN

ORDER DENYING (1) MOTION TO STAY PENDING APPEAL FILED BY JOHN TIMMONS, (2) AMENDED MOTION FOR STAY PENDING APPEAL FILED BY JOHN TIMMONS, (3) SUGGESTION OF NON-JOINDER WITH SUPPORTING DOCUMENTS FILED BY JOHN TIMMONS, (4) MOTION FOR REHEARING TO AMEND ORDER OF CONVERSION FILED BY JOHN TIMMONS, AND (5) AMENDED MOTION TO COMPEL SERVICE OF PROCESS FILED BY JOHN TIMMONS

This matter comes before the Court pursuant to the *Motion to Stay Pending Appeal* filed by John Timmons on July 26, 2004 [152], the *Amended Motion for Stay Pending Appeal* filed by John Timmons on July 27, 2004 [153], the *Suggestion of Non-Joinder With Supporting Documents* filed by John Timmons on August 16, 2004 [166], the *Motion for*

Rehearing to Amend Order of Conversion filed by John Timmons on August 16, 2004 [167], the *Amended Motion to Compel Service of Process* filed by John Timmons on August 16, 2004 [168], the opposition to said motions filed by the Chapter 7 Trustee and creditor Deere Credit, Inc., and the arguments submitted at the hearing held before the Court on October 12, 2004.

This Court has jurisdiction over these matters under 28 U.S.C. §1334(b) and the General Order of Reference entered in this district. These are core proceedings pursuant to 28 U.S.C. § 157(b)(2).

During the October 12, 2004 hearing, the Court read its Findings of Fact and Conclusions of Law into the record, which Findings of Fact and Conclusions of Law are adopted by this reference, and incorporated herein as if set forth in full. Therefore, it is hereby

ORDERED that the *Motion to Stay Pending Appeal* filed by John Timmons on July 26, 2004 [152] is hereby denied; and it is further

ORDERED that the *Amended Motion for Stay Pending Appeal* filed by John Timmons on July 27, 2004 [153] is hereby denied; and it is further

ORDERED that the *Suggestion of Non-Joinder With Supporting Documents* filed by John Timmons on August 16, 2004 [166] is hereby denied; and it is further

ORDERED that the *Motion for Rehearing to Amend Order of Conversion* filed by John Timmons on August 16, 2004 [167] is hereby denied; and it is further

ORDERED that the *Amended Motion to Compel*

Service of Process filed by John Timmons on August 16, 2004 [168] is hereby denied.

IT IS SO ORDERED.
APPROVED:
/s/ Myron N. Terlecky, Chapter 11 Trustee (with address)
Copies To:
(Complete list of individuals Served with their addresses)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
Eastern Division, at Columbus

Filed
August 16, 2004

In re: Erin Farms, Inc.
Debtor

Chapter 11

Case No. 03-63627
Judge Calhoun

SUGGESTION OF NON-JOINDER WITH SUPPORTING DOCUMENTS

John Timmons has filed several documents in the Adversary Case, Case No. 03-02430, which should have been filed in the Bankruptcy Case, Case No. 03-63627. It seems that final orders can not be entered into an adversary docket and therefore any order, in response to a motion docketed in the adversary case, will be non-final or interlocutory and hence not appealable. To correct this deficiency, Timmons finds it necessary to present duplicate motions for this Court's consideration so that the record can be corrected in preparation for any appeals that may arise.

John Timmons has been the farm operator for the properties located in Pickaway County, Ohio with the United States Farm Service Agency (henceforth FSA) designation of 291 and 292. The operation of these properties has been continuous from 1974 through 2004 with the exception of the years of 1998, 1999, and 2002. The property has been operated on a 50%/50% crop share basis in which the landowners, the Timmons Heirs and the Timmons Estate, bear land ownership costs, pay property taxes, pay for permanent improvements, and furnish half the expenses involved in planting the crop. The farm operator provides

the labor and machinery, undertakes temporary improvements and repairs, and pays the other half of the expenses of planting a crop. The crop is harvested and then delivered to a grain facility where it is divided equally between the landowner and the farm operator. The sale of the crop then determines the profit (or loss) garnered by the respective entities from this type of lease.

Erin Farms, Inc. was the farm operator for the 2002 crop year and the lease was for one year with the same 50%/50% crop share lease as described above. Therefore, it would not be possible for Deere Credit to claim a first and best lien on the landowner's share. John Timmons was the farm operator for 2001, 2003, and 2004 and the lease arrangement was also a 50%/50% crop share lease. Timmons chose not to be the farm operator in 2002 and chose Erin Farms, Inc. as the operator conditioned upon a contract that limited their tenure to only one year and written in such a manner that it could not be considered a continuing contract.

Copies of the following documents have been appended to demonstrate the crop share leases and the contract with Erin Farms, Inc.:

1. 2001 contracts for FSA 291 and 292 with acreage certification in the name of John Timmons. Prior year contracts would also be available. Six pages.

2. 2002 FSA contracts in the name of Erin Farms, Inc. Four pages.

3. 2003 FSA contracts in the name of John Timmons. Four pages.

4. 2002 contract made between John Timmons and Erin Farms. One page.

Although John Timmons feels that the appended

documents are dispositive, he is also in possession of cancelled checks and receipts to indicate that he has paid for his share of the expenses in the production of the crop.

John Timmons therefore asks this Court to make a determination that he was the 2003 farm operator for the property described above and that Deere Credit, Inc. has no factual claim of lien priority for the farm operator's crop share. Likewise, Timmons further asks that this Court recognize that Deere Credit could never claim the land owner's share of the crop and therefore would never be entitled to a claim priority for that share. Deere Credit's claim of lien priority for FSA 291 and 292 for the crop year of 2003 is therefore based in fantasy, lacks merit, and must be denied by this Court. It must be assumed that Deere Credit did have a lien on the 50% farm operator's share for the 2002 crop year. Crop liens attach to a growing crop for the year designated by the contract, not the realty on which it is grown; it is also inconceivable that the crop lien can be extended past a specific described term and have legal foundation. It would seem more plausible that Deere Credit would possess a civil action for fraud or illegal conversion of mortgaged property rather than have a claim of lien priority for a succeeding crop. One should look to the lien and how it was perfected. Failure to file crop liens for the properties encumbered by the mortgage, in their respective county courthouses, would appear to be carelessness on the part of a creditor and the failure to notify grain facilities of a mortgage and require dual endorsed checks, would be reckless and lack due diligence. These matters must be addressed in the future after the appeal process has been exhausted.

/s/ John Timmons
John Timmons, pro se

This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED. Dated: August 10, 2004

/s/ Donald E. Calhoun, Jr.
Donald E. Calhoun, Jr.
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	Case No. 03-63627
Erin Farms, Inc.,	Chapter 11
Debtors.	Judge Calhoun

MEMORANDUM OPINION ON MOTION OF THE U.S. TRUSTEE TO CONVERT CASE TO CHAPTER 7 AND OBJECTIONS OF ERIN FARMS, INC. AND JOHN TIMMONS

This matter came on for hearing on August 5, 2004 at 9:30 a.m. On:

(1) the Motion of the U.S. Trustee to Convert Case to Chapter 7,

(2) Objection of Erin Farms, Inc. to Convert Case to a Chapter 7, and.
(3) John Timmons' Objection to the U.S. Trustee's Motion to Dismiss.

This Court has jurisdiction over this matter under 28 U.S.C, §1334(b) and the General Order of Reference entered in this district. This is a core proceeding pursuant to 28 U.S.C.

§157(b)(2).

At the conclusion of the August 5, 2004 hearing, the Court read its Findings of Fact and Conclusions of Law into the record, which Findings of Fact and Conclusions of Law are adopted by this reference, and incorporated. herein as if set forth in full. Therefore, it is hereby

ORDERED that Trustee's motion to covert Erin Farms, Inc. and B & B Custom Applications to a Chapter 7 bankruptcy is hereby granted.

IT IS SO ORDERED.

Copies to: (Names and addresses of Parties)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
Eastern Division, at Columbus

	Filed July 19, 2004
In re: Erin Farms, Inc.	Chapter 11
Petitioner and Defendant	Case No. 03-63627
	Judge Calhoun

DEERE CREDIT, INC.
Adversary Proceeding No. 03-02430
Plaintiff,
-Vs.-
ERIN FARMS, Inc. et al.
Defendants

MOTION TO COMPEL SERVICE OF PROCESS

John Timmons was never served with a summons and complaint and has therefore been denied his constitutional right to counter-claim and defend the erroneous allegations of lien priority brought by Deere Credit in this Court. Timmons appeared at a hearing scheduled June 8, 2004 to voice his claim as a substantial right. This hearing, on a trial of the merits of Deere Credit's claim of lien priority, was never held because all issues pertaining to the distribution of funds held in escrow by the Chapter 11 Trustee appeared to be resolved. This ignored the fact that Timmons and the Timmons Family had been injured by these erroneous and unjust claims and that they had a right to address their losses in this court by way of counter-claims.

On July 8, 2004, this Court approved the proposed order on distribution of funds without considering the rights of Timmons, the Timmons Heirs, and the Timmons Estate.

The Plaintiff has the responsibility to present a preponderance of the evidence if they wish to prevail in their claim. It is incumbent on this Court to allow the Plaintiff their right to present this evidence and it is mandatory that this Court preserve the Civil and constitutionally guaranteed Rights of the Defendants to have their day in court and to defend their interests. This is not a situation in which this Court is allowed to portray that some minor defect or error has occurred in pleading or process. This Court is about to violate the Civil and constitutional rights of the Defendants if the Plaintiff is not compelled to serve Timmons and to bring forth their allegations and claims; this would be a violation of this Court's oath of office in which it vowed to support the Constitution of the United States and vowed to protect the civil liberties of its citizens. It is time that this Court honors their oath and determines rightly that a minor infraction, if any, on the part of the Defendants, would not balance the infractions to the rules made by Deere Credit when they failed to serve John Timmons after October 30, 2003.

It is for this reason that John Timmons seeks an order that will compel service of a complaint and summons from Deere Credit. It is the belief that Timmons, the Timmons Heirs, and the Timmons Estate will prevail and that their judgments can be deducted from the funds currently held in escrow by the Trustee.

Respectfully submitted by,
/s/ John Timmons
John Timmons, pro se

CERTIFICATE OF SERVICE

John Timmons certifies that the following parties have been served with a copy of this Motion to compel, by first class US Mail, postage prepaid, on this nineteenth day of July, 2004.

This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

/s/ Donald E. Calhoun
Donald E. Calhoun
United States
Bankruptcy Judge

Dated July 14, 2004

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re: ERIN FARMS, INC.
Debtor

Case No. 03-63627
Chapter 11
JUDGE CALHOUN

ORDER GRANTING MOTION OF CHAPTER 11 TRUSTEE FOR APPROVAL OF THE SETTLEMENT OF CERTAIN ISSUES IN ADVERSARY PROCEEDING NUMBER 03-2430 AND FOR AUTHORIZATION TO DISTRIBUTE FUNDS

This matter came before the Court upon the *Motion of Chapter 11 Trustee for Ord& Approving the Settlement of Certain Issues in Adversary Proceeding Number 03- 2430 and Authorizing Distribution of Funds* [125] (the "Motion") filed June 4, 2004, the *Objection to Chapter 11 Trustee's Motion and Request for Hearing to Settle Issues* [141] filed by John Timmons on June 21, 2004, and the *Objection of Pitstick to Trusiee's Motion for Approval of Settlement* [137] filed June 24, 2004 by Pitstick Farms, Inc., Neal Pitstick and Michael Pitstick. At the hearing held before the Court on July 8, 2004, the Court finds as follows:

1. There is no dispute regarding the facts bearing upon the

Motion;

2. None of proceeds to be distributed to Deere Credit, Inc., were received from crops owned by John Timmons;

3. The claims of Pitstick Farms, Inc., Neal Pitstick and Michael Pitstick are pre-petition unsecured claims.

4. Deere Credit, Inc., has a perfected security interest in the proceeds received by the Chapter 11 Trustee from the harvest and sale of crops owned by, or arguably owned by, the Debtor.

5. The approval of the Motion is in the best interests of creditors, the bankruptcy estate and other parties in interest;

6. There is no legal impairment or sustainable objection to the Motion; and,

7. In the discretion of the Court, the Motion is well taken and it is approved. There being no just reason for delay, final judgment is hereby entered as follows:

It is ORDERED, ADJUDGED and DECREED that the Motion be, and hereby is, granted in all respects; and it is further

ORDERED, ADJUDGED and DECREED that the Myron N. Terlecky, Chapter 11 Trustee (the "Trustee") be, and he hereby is, authorized to consummate the compromises and settlements specified in paragraphs 11, 12, 13, 14, 15 and 17 of the Motion; and it is further

ORDERED, ADJUDGED and DECREED that the Trustee be, and he hereby is,

authorized to make the disbursements specified in paragraphs 11, 12, 13, 14, 15 and 17 of the Motion; and it is further

ORDERED, ADJUDGED and DECREED that this Order does not prejudice the right of John Timmons to pursue any claim he may wish to assert in this Court or any other appropriate forum.

IT IS SO ORDERED.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. 03-63627
Chapter 11
Judge Calhoun
Adv. Pro. No. 03-02430

In re:
Erin Farms, Inc.,
Debtor.
Deere Credit, Inc.,
Plaintiff,

VS.

Erin Farms, Inc.

ORDER

This matter is before the Court *sua sponte*. A review of this case by the Court has shown that John Timmons, proceeding *pro se*, has filed various pleadings

with this Court, one of which is titled "Suggestion of Inadequate Joinder of Parties with Supporting Evidence of Ownership of Grains." In that pleading, Mr. Timmons argues that he *is* a necessary party in this adversary proceeding. The Court agrees with Mr. Timmons and holds that he is a proper and necessary party in this adversary proceeding.

Mr. Timmons will be deemed a party-in-interest in this bankruptcy of Erin Farms, Inc. and as a party-in-interest will be subject to follow all of the Court's Orders.

IT IS SO ORDERED.
Date: DEC. 18, 2003

Copies to:
John Timmons
10343 US Route 23
Lockbourne, Ohio 43137
General Service List

Entered:DEC. 22, 2003

BY: /s/ Donald E. Calhoun, Jr.
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:Erin Farms, Inc.,	Case No. 03-63627
Debtor.	Chapter 11
Vs	Judge Calhoun
Deere Credit, Inc.	Adv. Pro. No. 03-02430
Plaintiff,	
VS.	
Erin Farms, Inc.	Entered: Dec. 17, 2003
Debtor	/s/ Initials: (D. E. C.?)

ORDER

AGREED ORDER FOR HARVEST AND SALE OF CROPS FROM TIMMONS FARMS, PICKAWAY COUNTY

This matter comes before the Court upon the agreement of plaintiff Deere Credit, Inc. ("Deere Credit"), defendant Myron N. Terlecky, the Chapter 11 Trustee (the "Trustee"), and defendants Estate of Martha Elizabeth Caldwell Timmons ("Timmons Estate"), and the Court being advised that those parties have reached an agreement for harvest and sale of certain crops in a manner that will preserve the claims and interests of all parties against the proceeds claimed by the Chapter 11 estate, and the Court being duly advised, for good cause shown, it is

ORDERED, ADJUDGED and DECREED as follows:

1. The Trustee shall be, and hereby is, authorized to hire Pitstick Farms, Inc., an Ohio corporation, to harvest crops from the farms described as follows:

# Acres	Owner	County	FSA Farm No.
596	Timmons Estate and Heirs	Pickaway	291 and 292

2. The Trustee and/or Deere Credit shall be, and hereby are, authorized to monitor such harvest activity through their representatives and agents who shall be entitled to be present on the farm as the harvest proceeds and to observe the transport of grain directly from the field to an elevator for sale.

3. The Trustee shall be, and hereby is, authorized to immediately sell the crops harvested from the farms of the Timmons Estate in accordance with customary commercial terms and conditions. All checks issued by purchasers of such grain shall be made payable to "Myron N. Terlecky, Chapter 11 Trustee" and shall be deposited into an escrow account under the control of the Trustee.

4. Immediately after sale of the crops harvested from the farms of the Timmons Estate, the Trustee shall pay Pitstick Farms, Inc. at the rate of $18 per acre plus transportation for the custom harvest work.

5. The following deductions shall be made from the gross proceeds actually received by the Chapter 11 Trustee from the sale of crops harvested from the farms of the Timmons Estate: (a) the amounts paid to Pitstick Farms, Inc. pursuant to paragraph 4 of this Order; and (b) $50,000, representing the estimated pre-petition costs of producing the crops.

6. The Chapter 11 Trustee shall then immediately pay to the Timmons Estate, one-half of the net amount determined by the calculation specified in paragraph 5 of this Order in satisfaction of the claims of the Timmons Estate.

7. All other claims and interests of all parties shall be

preserved and shall transfer to the remaining proceeds of the crops that will be held in the escrow account maintained by the Trustee until further order of this Court.

IT IS SO ORDERED.

Date: Dec. 15, 2003

/s/ Donald E. Calhoun
United States Bankruptcy Judge

APPROVED:

/s/ Joseph C. Winner
Joseph C. Winner (0019246)
McFADDEN, WINNER, and SAVAGE
175 S. Third Street
Suite 210
Columbus, Ohio 43215
Telephone (614) 221-8868
Fax (614) 221-3985
Attorney for Plaintiff Deere Credit, Inc.

/s/ Richard F. Meyer
Richard F. Meyer (0002376)
BROWNING AND MEYER
8101 North High Street
suite 370
Columbus, Ohio 43235
Telephone (614) 471-0085
Fax(614) 430-8132
Attorney for Defendant Estate for Martha Elizabeth Caldwell Timmons

/s/ Initials (MNM?)
Myron N. Terlecky (0018628) STRIP, HOPPERS, LEITHART, McGRATH & TERLECKY CO., LPA 575 South Third Street
Columbus, Ohio 43215
Telephone (614) 228-6345
Fax (614) 228-6369
Chapter 11 Trustee

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
Eastern Division, at Columbus Filed: Nov. 19, 2003

In re: Erin Farms, Inc.
Debtor

Chapter 11
Case No. 03-63627
Judge Calhoun

AMENDED SUGGESTION OF INADEQUATE JOINDER OF PARTIES

John Timmons filed a document with supporting evidence that was incomplete and probably improperly filed in the Adversary Proceeding instead of in this bankruptcy proceeding. This pleading with appended documents seeks to correct these deficiencies.

John Timmons is the farm operator of the properties owned by the Elizabeth Timmons Estate and the Pryor Timmons Heirs in northern Pickaway County for the 2003 crop year. These properties are identified as farm numbers 291 and 292 by the United States Farm Service Agency (hereinafter FSA) and are operated on a 50%/50% crop share basis as specified on the contracts for participation in the US Government program (Appended Exhibits). John Timmons was not named as a defendant, but the Elizabeth Timmons Estate and the Pryor Timmons Heirs were named as defendants in this bankruptcy proceeding. John Timmons now asks this court to recognize that he does have a vital interest and should have been included as a defendant.

A court's jurisdiction over an individual is not obtained if the individual is not legally served a complaint in a legal action. The operation of the Timmons Heirs and Timmons Estate property is on a 50%/50% crop share basis

which causes grain to be commingled and thus creates the present conundrum: can John Timmons legally harvest his grain if this interferes with, and exposes the property owners to sanctions from, this Bankruptcy Court? The United States Constitution does preclude seizures of property without Due Process and civil actions and remedies are available that can estimate actual damages as well as to assign punitive damages because of the delay in the 2003 harvest caused by Deere Credit, Inc.'s unjust claims.

/s/ John Timmons

John Timmons, pro se
10343 US Rt. 23
Lockbourne, Ohio 43137
(740) 983-3654
November 19, 2003

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
Eastern Division, at Columbus Filed October 30, 2003

In re: Erin Farms, Inc. Chapter 11
Debtor Case No. 03-63627
Judge Calhoun

DEERE CREDIT, INC.
Adversary Proceeding No. 03-02430
Plaintiff,
-Vs.-
ERIN FARMS, Inc. et al.
Defendants

MOTION FOR EXPEDITED HEARING TO RESOLVE ISSUES

John Timmons knows that he is the farm operator for the property located in northern Pickaway County, owned by the Timmons Heirs and the Elizabeth Timmons Estate, and identified as the farms with the FSA numbers 291 and 292. However, after contact with other family members and after examination of the documents filed in this case, it appears that Deere Credit, Inc. believes otherwise. It is becoming increasingly imperative that the crops be harvested before untoward weather events might occur. Therefore, John Timmons, a party with substantial interest in this Adversary Proceeding, requests that this Court schedule an expedited hearing at its earliest possible convenience. This Court can then determine who operated these properties in the 2003 crop year and therefore who is entitled to the grain and government payments for this year.

/s/ John Timmons
John Timmons

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
Eastern Division, at Columbus
Filed: Nov. 19, 2003

In re: Erin Farms, Inc.
Debtor

Chapter 11
Case No. 03-63627
Judge Calhoun

Deere Credit, Inc.
Plaintiff

Adversary Proceeding No. 03-02430

vs.

ERIN FARMS, Inc., et al.
Defendants

Filed 10/30/2003

SUGGESTION OF INADEQUATE JOINDER OF PARTIES WITH SUPPORTING EVIDENCE OF OWNERSHIP OF GRAINS

John Timmons is the farm operator of the properties owned by the Elizabeth Timmons Estate and the Pryor Timmons Heirs in northern Pickaway County for the 2003 crop year. These properties are identified as farm numbers 291 and 292 by the United States Farm Service Agency (hereinafter FSA) and are operated on a 50%/50% crop share basis as specified on the contract for participation in tje US Government program (Exhibit A). John Timmons now asks this court to recognize that he does have a vital interest and should be recognized as a party in interest for purposes of this Adversary Proceeding. He further asks this court to protect his interests in the growing crops that he planted on these properties for the 2003 crop year.

Erin Farms, Inc. did operate these properties on a 50%/50% crop share lease (Exhibit B) for the 2002 crop year, pursuant to an agreement (Exhibit C) reached between John Timmons and William Potts, Jr., signatory for Erin Farms, Inc. Specific clauses were incorporated within this agreement that provided for the termination and for the reversion of the properties at the conclusion of the 2002 harvest. It is assumed that Erin Farms, Inc. did receive their 50% share of government payments as well as %0% of the grain grown on these properties for the 2002 crop year. However, Erin Farms, Inc.'s rights to the Timmons properties were limited only to that year and did not continue to any future years. John Timmons therefore denies Deere Credit's allegations that they have a first and best lien on crops or rights to government payments derived from the 2003 growing season for the properties identified by the FSA as farms 291 and 292. The Elizabeth Timmons Estate, John Timmons, and the Timmons Heirs do not have grain or other assets of Erin Farms, Inc. in their possession and they are no longer associated with Erin Farms, Inc.

SUPPORTING ARGUMENTS

Deere Credit, Inc. claims a first and best lien on growing crops on farms 291 and 292 and the right to all government payments from the 2003 crop year. This is erroneous and constitutes a gigantic leap to conclusions that are not supported by the facts. An agreement with Erin Farms limited their interests to a 50% share of the 2002 crop and specified that future contract negotiations needed to be in writing and that these negotiations could only be conducted after the 2002 crop was harvested. The Timmons Heirs and the Timmons Estate were entitled to the landowner's share of both the 2002 and the 2003 crop pursuant to this agreement as well as the the FSA contract signed by Erin Farms for the 2002 crop year and John Timmons for the 2003 crop year.

The producer's 50% share of the 2003 crop belongs to John Timmons pursuant to the agreement signed by John Timmons and Erin Farms. The written evidence must be conclusive and would be proof that Erin Farms, Inc. has no continuing interest in crops beyond the 2002 crop year. All of the shares of the crop and government payments for the 2003 crop year must therefore belong to John Timmons, the Timmons Heirs, and the Elizabeth Timmons Estate, and cannot be claimed as property belonging to the Erin Farms, Inc. Bankruptcy Estate.

RELIEF REQUESTED

Pursuant to the evidence presented, John Timmons asks this court to issue an order establishing that the crops grown for the 2003 crop year on FSA 291 and 292 are under the direct and sole ownership and control of John Timmons, the Timmons Heirs, and the Elizabeth Timmons Estate and that they are the entities who are solely entitled to determine the future of this crop in regard to the harvest, eventual sale, and use of monies derived from the conversion of these crops.

/s/ John Timmons Dated 10/30/2003

John Timmons, pro se
10343 US Rt. 23
Lockbourne, Ohio 43137
(740) 983-3654

Contract — Crop Share 50%/50%

2002 crop year

The following terms denote the understanding reached between Erin Farms, Inc. and John Timmons, agent, for the Pryor Timmons Heirs and the Elizabeth Timmons Estate, for the property or farms located in Harrison Township West in northern Pickaway County.

The property, (henceforth collectively known as the River Farms) is approximately 630 acres that is mostly bounded in the northwest quadrant of U.S. Route 23 and State Route 762. Approximately twenty acres of tillable land lie east of Route 23 and are included in this total. The Timmons Heirs' farm is approximately 270 acres whereas the farm for the Elizabeth Timmons Estate is approximately 360 acres.

John Timmons agrees to rent the River Farms to Erin Farms, Inc. on a 50%/50% crop share basis with one half of the expenses paid by the Timmons Heirs and the Elizabeth Timmons Estate and the other one half paid by Erin farms, Inc. The crop is to be split with one half going to the Timmons Heirs and the Elizabeth Timmons Estate and the other one half going to Erin Farms.

This rental agreement is limited to the production of fall crops; wheat or other spring crops are not to be seeded. The farms revert to John Timmons for fall and spring tillage once the 2002 crop is harvested (such tillage not to interfere with or to impede the harvest). Future rental agreements with Erin Farms, Inc., if any, are to be negotiated at a date after the crops are harvested.

July 23, 2002

/s/ John Timmons
John Timmons,
Agent for the River Farms

/s/ W. R. Potts
William Potts, Jr.
for Erin Farms, Inc

Date: /s/ July 22, 2002

Date: /s/ 7/22/02